



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

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**Special Attention of:**

Public Housing Agencies  
Public Housing Hub Directors  
Public Housing Program Center Director  
Regional and Field Office Directors  
Resident Management Corporations

**Notice PIH-2023-25**

**Issued:** September 1, 2023

**Cross References:**

Notices: PIH-2011-65; PIH-2011-69; PIH-2014-24; PIH-2018-19; PIH-2020-03; PIH-2020-05; PIH-2021-30; PIH-2021-37; PIH-2022-32; PIH-2023-17

Regulations: 24 CFR part 905; 24 CFR 905.300; 24 CFR part 903; 24 CFR part 990; 24 CFR part 970; 24 CFR part 965; 24 CFR part 964; 24 CFR 5.110; 2 CFR 200.333(b)

Statutes: 44 U.S.C. 3520; 42 U.S.C. 4332(2)(C); 42 U.S.C. 1437 et seq.; Public Law 110-161; Section 209 of Public Law 115-174

Academic: Harvard Cost Study (2003)

This notice remains in effect until amended, superseded, or rescinded.

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**SUBJECT: Public Housing Operating Subsidy Grant Eligibility Calculations and Processing for Calendar Year (CY) 2024**

**1. PURPOSE**

This notice provides public housing agencies (PHAs) with instructions for calculating Operating Subsidy grants for CY 2024 and establishes submission deadlines.

**2. BACKGROUND**

HUD provides operating subsidy grants for public housing at the project level on a calendar year basis. The Operating Fund Program is authorized under the United States Housing Act of 1937 (42 U.S.C. 1437g). Regulatory requirements for the Operating Fund Program are located at 24 CFR Part 990. For CY 2024, funding for the Operating Fund Program is anticipated to be allocated by Congress through the Further Consolidated Appropriations Act.

PHAs must electronically submit operating subsidy grant calculations for each Public Housing project identified in HUD's Inventory Management System - Public and Indian Housing (PIH) Information Center (IMS-PIC). PHAs submit this information using electronic forms Operating Fund Grant: Calculation of Utilities Expense

Level (form HUD-52722) and the Operating Fund Grant: Calculation of Total Program Expense Level (form HUD-52723), which are referred to as 22/23 Forms.

All references to days in this Notice are calendar days, unless specified otherwise. All deadlines for submissions made through the Operating Funds Web Portal are at 5:00 p.m. eastern time on the date of the deadline, unless specified otherwise.

### **3. CHANGES AND ADDITIONS TO THIS NOTICE**

Compared to Notice PIH-2021-36 the following changes and additions are in this notice:

- The Excel Workbooks housing form HUD-52722 and form HUD-52723 were previously referred to as Tools. Those Tools have been migrated to the Operating Fund Web Portal, and are now electronic forms, which are now referred to as Forms.
- Submission requirements for PEL appeals based upon actual costs have been clarified.
- The definition of days used in this notice has been clarified to mean calendar days. The deadline for submissions made via the Operating Fund Web Portal is at 5:00 p.m. eastern time on the date of the deadline, unless specified otherwise.
- The deadline for PHAs to submit their form HUD-50058 for the Operating Fund reporting period (July 1st of the prior year to June 30th of the current year) is July 30th of the current year.

### **4. COMMUNICATION**

HUD disseminates information to PHAs using the following methods: Operating Subsidy Grant Processing Web Page- contains information related to CY 2024 Operating Subsidy grant processing. It can be accessed through the following link:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/opfnd2024/](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/opfnd2024/).

The Operating Fund Web Portal: This provides PHAs with news and messages, and a calendar highlights operating subsidy grant processing milestones. The Operating Fund Web Portal includes the PHA 22/23 forms and guidance documents and PHAs' current and historical operating subsidy grant data. Further information is available via the following link:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/webportal](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/webportal).

The Operating Subsidy Grant Listserv: This is used to send out mass emails to subscribers on the list. The Operating Subsidy Grant Listserv can be accessed using the following link:

[https://www.hud.gov/subscribe/signup?listname=Financial%20Management%20Division%20\(FMD\)&list=PH-FMD-L](https://www.hud.gov/subscribe/signup?listname=Financial%20Management%20Division%20(FMD)&list=PH-FMD-L).

### **5. APPLICABILITY**

This notice applies to PHAs administering the Public Housing program, including PHAs participating in the Moving to Work (MTW) Demonstration program. PHAs receiving transition funding (as defined in 24 CFR 990.115) must be aware that continued qualification for that element of the formula requires continuous compliance with asset management requirements stipulated in 24 CFR part 990, subpart H.

Beginning with the Consolidated Appropriations Act, 2008 (Public Law 110-161, enacted on December 26, 2007), Congress allowed PHAs with 400 or fewer public housing units to elect an exemption from any asset management requirements imposed by HUD relating to the Operating Fund Rule. If the Fiscal Year (FY) 2024 Consolidated Appropriations Act removes this exemption, previously exempt PHAs will find required modifications to their submissions posted on the CY 2024 Financial Management Division (FMD) external web page [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/opfnd2024](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/opfnd2024).

## **6. HUD'S INITIAL AND CALENDAR YEAR (CY) OBLIGATIONS OF CY 2024 OPERATING SUBSIDY GRANT**

At the beginning of the calendar year, HUD will fund projects on an estimate; and later deploy the 22/23 Forms for projects determined to be eligible. If HUD does not fund or does not generate the 22/23 Forms for a project that the PHA considers eligible for an operating subsidy, the PHA should contact its local HUD (PIH) Field Office. If HUD funds a project or generates the 22/23 Forms for a project that is not eligible, the PHA must not draw down the funding or submit the 22/23 Forms. If ineligible amounts are drawn, the PHA must report the transaction to its local PIH Field Office, which will initiate action to return the amount drawn.

At the beginning of the year, HUD estimates eligibility from data it pre-populates into the 22/23 Forms. After the 22/23 Forms are processed, HUD funds projects based on the eligibility shown in those 22/23 Forms. As the 22/23 Forms are updated throughout the year, HUD funds projects based upon the most recently processed 22/23 Forms. There is a lag in funding PHAs based on updated 22/23 Forms because of the time required to process the updated 22/23 Forms and obligate funds.

PHAs can identify the latest 22/23 Forms processed by HUD in the Operating Fund Web Portal. While, on a portfolio level, HUD's estimated funding is normally very accurate, on a project level, estimated eligibility can vary significantly from actual eligibility. HUD funds each project on a cumulative basis (e.g., funding for February would bring total funding for the year up to 2/12ths of prorated eligibility, and funding for March would bring total funding for the year up to 3/12ths of prorated eligibility).

HUD offsets, de-obligates, or requires repayment of any funded amounts for any project deemed ineligible or any project overfunded based on incorrect estimates. HUD publishes obligation reports on the Operating Subsidy Grant Processing Web Page, which identify the amount of funds obligated throughout the calendar year. If a PHA finds that the estimated eligibility exceeds the project's actual eligibility for CY 2024, the PHA must not draw down any excess funds and shall immediately notify the appropriate Field Office.

A PHA can access its current and historic operating subsidy eligibility data in the Operating Fund Web Portal, in addition to using the Operating Fund Web Portal to:

- Access the most recent version of forms HUD-52723 and HUD-52722.
- Identify the status of new project requests.
- Create and submit Application for Federal Assistance (SF-424), Certification of Payments to Influence Federal Transactions (form HUD-50071), and Disclosure of Lobbying Activities (SF-LLL).
- Submit the current year 22/23 Forms and related supporting documents.
- Elect to participate in the Small and Rural Frozen Rolling Base program.

## **7. GENERAL OPERATING SUBSIDY GRANT SUBMISSION PROCESSING FOR CY 2024**

On April 4, 2022, the System for Award Management (SAM) stopped using the DUNS numbering as an identifier. PHAs must have a Unique Entity Identifier (UEI) generated by the System for Award Management (SAM). Additionally, PHAs must have active registration in SAM ([www.sam.gov](http://www.sam.gov)) and an accurate Tax Identification Number (TIN) in the Line of Credit Control System (LOCCS) to receive an operating subsidy grant. The TIN reported by the PHA in SAM and LOCCS must be the same. The Operating Subsidy Grant Web Page provides directions on how to request a UEI. HUD will suspend or not obligate operating subsidy grants for PHAs that do not comply with these requirements.

### **Required Forms and Documentation**

For HUD to determine the amount of operating subsidy grant eligibility, PHAs must complete and submit the following electronic forms for each project using the Operating Fund Web Portal:

- Form HUD-52723: information on this form is used to calculate the total amount of operating subsidy grant eligibility. HUD deploys the HUD-52723 and instructions with the 22/23 Forms in the Operating Fund Web Portal.
- Form HUD-52722: information on this form is used to calculate the Utility Expense Level. HUD deploys the HUD-52722 and instructions as part of the 22/23 Forms in the Operating Fund Web Portal.
- SF-424, Application for Federal Assistance: PHAs complete the web-based form SF-424 and upload the signed completed SF-424 through the Operating Fund Web Portal. A completed SF-424 must be submitted by October 20, 2023, for the PHA to receive an operating subsidy grant. Each PHA shall complete only one SF-424 for the entire amount of its CY 2024 operating subsidy grants. To clarify what PHAs are certifying to via the SF-424, HUD created a list of certifications (provided below) that the SF-424 applies (depending on the number of units regarding asset management and related fees) to:
  - Public Housing Operating Fund Calculation of Operating Fund PHA-Owned Rental Housing Form HUD-52723, Section 5, Certifications:
    - In accordance with 24 CFR 990.215, I hereby certify that Housing Agency is in compliance with the annual income reexamination requirements and that rents and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.
    - In accordance with § 213 of Title II of Division L of the Consolidated Appropriations Act, 2023, Pub. L. 117-328 (approved December 29, 2022) and subsequent acts containing the same provisions, I hereby certify that the Housing Agency has 400 or fewer units and is implementing asset management.
    - In accordance with 24 CFR 990.255 through 990.290 – Compliance of Asset Management, I hereby certify that the Housing Agency has 250 units or more and is in compliance with asset management. I understand in accordance with 24 CFR 990.190(f), PHAs that are not in compliance with asset management will forfeit the asset management fee.
    - I hereby certify the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement up to 5 years, fines, and civil and administrative penalties (18 U.S.C. § 287, 1001, 1010, 1012; 31 U.S.C. § 3729, 3802).
- Form HUD-50071 Certification of Payments to Influence Federal Transactions: If applicable, PHAs must complete and electronically sign the form HUD-50071 in the Operating Fund Web Portal.
- Other supporting documentation requested by the Field Office.

## 8. SUBMISSION PROCESS

The 22/23 Forms and instructions for completing the 22/23 Forms are posted to the Operating Fund Web Portal. HUD posts other required documents, submission deadlines, and guidance materials related to various formula

elements on the Operating Subsidy Grant Processing Web Page. Failure to meet the posted submission deadline is a ground for HUD’s denial of an operating subsidy grant to a PHA.

PHAs submit their 22/23 Forms to HUD through the Operating Fund Web Portal. NOTE: PHAs must submit the 22/23 Forms and other required documents to HUD regardless of whether the submission is prepared by the PHA’s fee accountants or any other entity acting on behalf of the PHA. Fee accountants or entities other than the PHA are not to submit the 22/23 Forms and other required documents to HUD.

## 9. PROJECT REGROUPINGS

Project regrouping changes and transfers and consolidations per Notice PIH-2014-24 will apply to operating subsidy formula calculations in the funding year following the fiscal year in which the changes become effective such that they are included in HUD pulls of IMS-PIC project, building and unit characteristics data for the calculation of Project Expense Levels (PELs). Prior to the point at which the changes are reflected in the HUD data pulls, the operating subsidy formula will continue to include PELs based on project characteristics that existed prior to the regrouping, transfer, or consolidation. PHAs should use the PEL estimator to understand the possible financial impact of regroupings before proceeding with regroupings. The PHA must ensure that it is accounting for the operating subsidy grant properly prior to the changes becoming effective.

## 10. PRE-POPULATED DATA

HUD pre-populates the CY 2024 22/23 Forms. HUD uses unit status for the reporting period July 1, 2022, through June 30, 2023, as reported in the IMS-PIC system to pre-populate the CY 2024 22/23 Forms. Asset Repositioning Fee (ARF) eligibility is derived from IMS-PIC data and pre-populated into the form HUD-52723. Unit status data from IMS-PIC is modified based on the ARF eligibility determinations. If pre-populated data is incorrect, PHAs can request modifications in the comments section of the form HUD-52723. Table 1 presents edits that PHAs, and Field Offices can and cannot make.

**TABLE 1**

<b>Item Description</b>	<b>PHA Can Edit</b>	<b>Field Office Can Edit</b>
Project Number	No	No
Name of PHA	No	No
Address of PHA	No	No
Unique Entity Identifier (UEI) (pre-populated; edit to be consistent with SAM and LOCCS data)	No	No
Unit status data: Form HUD-52723, Section 2, Categorization of Unit Months, Lines 01, 02, and 05 through 13 <sup>1</sup>	No	Yes
Unit status data: Form HUD-52723, Section 2, Categorization of Unit Months Lines 03 and 04; Column A, Lines 6a and 17, Column B1	Yes	Yes
Per Unit Month (PUM) PEL	No	No
PEL inflation factor	No	No
Utilities expense level (UEL) inflation factor	No	No
Payment in lieu of taxes (PILOT)	Yes	Yes
Cost of independent audit	Yes	Yes

<sup>1</sup> On the form HUD-52723, unit status data in Section 2, Categorization of Unit Months, Column A, Lines 03 and 04 are for new units that do not have a full reporting period of unit status data. Guidance is available on the Operating Subsidy Grant Processing Web Page Operating Subsidy Grant Processing Web Page on the completion of 22/23 Forms for new projects.

ARF: Form HUD-52723, Section 3, Line 14	Yes	Yes
PUM formula income	Yes	Yes
Transition funding <sup>2</sup>	No	No

In some cases, a PHA will need to allocate data from the Financial Assessment Submission Subsystem (FASS)-PH Financial Data Schedule (FDS) to multiple projects. Non-asset management PHAs with multiple projects in IMS-PIC may report their portfolio as a single combined project in the FASS-PH FDS. If a non-asset management PHA has multiple projects in IMS-PIC, it will continue to submit the 22/23 Forms for each project. HUD pre-populates Formula Income, PILOT, Jobs Plus Earned Income Disregard (JPEID) (if the PHA participates) and Audit Fees for projects that submit FDS data.

Where a PHA submits FDS data for a single project, but FDS data relates to multiple projects, the PHA will need to allocate the FDS data to the sections of the 22/23 Forms for projects that were not pre-populated with this data. The cumulative amount for all projects for each line item must sum to the pre-populated data, unless adjusted pursuant to operating subsidy grant guidance (i.e., Formula Income can be adjusted for FSS and PILOT, and audit fees can be updated to reflect more recent expenditures) to the extent consistent with any applicable contract terms. Guidance on how to allocate Formula Income is available on the Operating Subsidy Grant Processing Web Page at

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/opfnd2024](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/opfnd2024).

## **CHANGES TO PRE-POPULATED UNIT MONTHS DATA**

PHAs enter unit status data into IMS-PIC, which is used by HUD to calculate each PHA's Operating Subsidy grant eligibility. PHAs must ensure the unit status data in their Operating Subsidy grant submissions are correct and, if needed, work with their respective HUD Field Offices to edit their unit status data.

Prior to requesting a change to unit status data, PHAs must ensure that the source data in IMS-PIC is changed to be consistent with Form HUD-52723. Most changes to IMS-PIC can be made directly by PHAs. Some changes require an IMS-PIC Coach or a Technical Assistance Center (TAC) ticket. PHAs should ensure that changes are made as early as possible and prior to submitting the 22/23 Forms to their Field Office.

If Field Offices implement changes to unit status data pre-populated in Section 2 of the form HUD-52723, the PHA must change the IMS-PIC data to match the change of unit months on form HUD-52723. The IMS-PIC Coach should make the change if the PHA is unable to make the change directly in IMS-PIC; or the Field Office should obtain documentation of a TAC ticket created to modify the data or evidence that the change is appropriate but cannot be made because of system limitations.

Guidance on timely reporting in Notice PIH-2011-65 requires PHAs to submit forms HUD-50058 and HUD-50058 MTW within 60 days of the effective date of any actions recorded on line 2b of the forms.

HUD pulls unit status data to prepopulate Operating Subsidy forms from IMS-PIC 30 days after the end of the reporting period (July 30) to prepopulate the form HUD-52723. PHAs are required to have all form HUD-50058 submissions for the Operating Subsidy reporting period (July 1st of the prior year to June 30th of the current year) complete by July 30th of the current year.

## **11. SUBMISSION OF THE 22/23 FORMS FOR NEW PROJECTS**

<sup>2</sup> PHAs that did not comply with asset management in a prior funding cycle, may not have transition funding pre-populated into its form HUD-52723

Throughout the funding year, FMD generates a list of potential new project/units entered by the PHA in IMS-PIC and approved by the Field Office that have actual Date of Funding Availability (DOFA) data and are in management status. This list is available in the New Project section of the Operating Subsidy Grant Web Portal.

To receive funding for new project/units, a PHA must initiate the process by submitting an email to its Field Office requesting funding for a new project. The email must contain the project development number with text indicating that it is a new project for which the PHA would like to receive funding. The PIH Field Office will confirm the eligibility of the new project in the Operating Fund Web Portal. Once confirmed by the Field Office, FMD will prepare and deploy the 22/23 Forms and make them available to the PHA.

New project requests may be submitted at any point during the year prior to the deadline noted below. To receive funding for new projects in CY 2024, a PHA must email its funding request to its local HUD Field Office no later than June 3, 2024. HUD encourages PHAs to request new 22/23 Forms as early as possible. After receiving a request, the Field Office must complete a request for a new project in the Operating Fund Web Portal no later than June 10, 2024.

HUD deploys the 22/23 Forms multiple times during the year to provide timely funding to PHAs. PHAs may identify the status of any new project request by accessing the New Project module in the Operating Fund Web Portal. HUD will deploy the 22/23 Forms for new projects and notify PHAs via email no later than June 17, 2024. To receive funding in 2024 PHAs must submit the 22/23 Forms using the Operating Fund Web Portal to the appropriate HUD Field Office no later than June 24, 2024. **Submissions received after the deadline will not be considered for funding in CY 2024.** If a project that was eligible but did not receive funding in the prior funding year, then PHAs may include eligible unit months for October, November, and December for the prior funding year as appropriate in their new project current year submission in Section 2, Column A, Line 04.

To be considered eligible for funding new projects/units must, at a minimum, have the following information in IMS-PIC:

- Annual Contributions Contract (ACC) Units
- Management Status
- Actual DOFA

To add a new project in IMS-PIC refer to the job aid found here:

[https://www.hud.gov/sites/dfiles/PIH/documents/building\\_unit\\_uploadjobaid.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/building_unit_uploadjobaid.pdf)

Funding for new projects/units differs from existing projects/units due to the timing and availability of certain data elements that drive the operating subsidy formula. For example, new projects/units lack sufficient utility information necessary to calculate a stand-alone UEL. Further, new projects/units normally lack audited or unaudited FDS data which is used to compute formula elements such as formula income, audit costs, and PILOT. As a result, new projects/units must follow special procedures that are different from existing projects with a full reporting period. Finally, all new projects/units are considered fully occupied until the project/unit has a full year of reporting period data for the purposes of calculating the Eligible Unit Months (EUMs). Detailed guidance can be found on the CY 2024 Operating Subsidy Grant Processing Web Page here:

<https://www.hud.gov/sites/dfiles/PIH/documents/CY21NewProjectGuidance.pdf>.

## **12. SUBMISSION OF REQUEST FOR REVISION TO THE CY 2024 OPERATING SUBSIDY GRANT ELIGIBILITY**



The submission of a revised 22/23 Tool by a PHA in the Operating Fund Web Portal constitutes a request for a revision. Prior to making its revision request, the PHA should initiate contact with the Field Office well in advance to resolve any issues prior to the revision deadline. When making such a submission, the PHA must provide an explanation of the change(s) being requested, and the reason for the change(s). PHAs may request revisions to their original CY 2024 operating subsidy grant submissions based on any of the four reasons listed below:

- Correction of mathematical, clerical, information system, or other errors.
- Eligibility for Asset Repositioning Fees or new units in existing projects already under payment (24 CFR 990.155).
- Approval of new utilities incentives/contracts pursuant to 24 CFR 990.185, but not including Rate Reduction Incentives.
- Appeals submitted and approved by HUD in accordance with this Notice (pursuant to 24 CFR 990.245).

***All revision requests MUST be submitted to the Field Office no later than June 14, 2024. Requests submitted after this date will not be accepted, unless the change lowers the operating subsidy grant eligibility or is the result of a documented HUD error, in which case such requests are required.***

### **13. OPERATING SUBSIDY GRANT CALCULATION**

This section provides detailed explanations of how operating subsidy grant eligibility is calculated. The formula for operating subsidy grant eligibility is:

$$\text{Operation Subsidy Eligibility} = (\text{PEL} + \text{UEL}) \times (\text{EUM}) + \text{Add-ons} - [\text{Formula Income} \times (\text{EUM})]$$

Where eligible unit months (EUM) are the number of public housing units in eligible categories expressed in months during the reporting period and for which a PHA receives operating subsidy grants. The 22/23 Forms are programmed to calculate the operating subsidy grant eligibility using this formula.

Except for ARF, public housing units must be subject to the ACC and be in management status in IMS-PIC to receive operating subsidy grants. In general, for Formula Income, PEL, UEL, and most Add-ons to be included in the calculation for eligibility, public housing units must be either: (1) a unit occupied by a public housing-eligible family under lease pursuant to 24 CFR 990.120(b), 24 CFR 990.125(a), and 24 CFR 990.140; (2) a dwelling unit with a HUD-approved vacancy pursuant to 24 CFR 990.125(b) as defined in 24 CFR 990.145; or (3) a vacant unit at or below the limited number of vacancies pursuant to 24 CFR 990.125(c) as defined in 24 CFR 990.150. Eligibility for some Add-ons, such as asset management fees and ARF, is limited to units meeting certain criteria (these are discussed below).

The remainder of this section discusses the components of the operating subsidy grant eligibility formula in detail.

#### **A. The PEL**

The PEL is a model-generated cost estimate for each project, exclusive of taxes, utilities, and add-ons. The PEL is expressed as a per unit month (PUM) cost and is based on IMS-PIC project, building, and unit characteristics. PELs may change when PHAs regroup their projects. To estimate the impact of project regroupings, PHAs can use the PEL Estimator on the Asset Management Project Expense Levels web page at:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/pels](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/pels).

#### **B. The UEL and Central Office Cost Center (COCC)**

The UEL is the product of the utility rate, the payable consumption level, consumption incentives, and the utilities inflation factor and is expressed as a PUM dollar amount. COCC utility consumption and costs are not



included in the calculation of the PHA's project UEL on form HUD-52722. If the COCC is located within a project, actual consumption (including the rolling base consumption and utility costs for the COCC) must be excluded from the UEL calculation for the project. PHAs must explain the methodology used to exclude COCC data (e.g., square footage).

To access guidance for excluding COCC utility consumption and costs from combined consumption and costs in a pre-asset management Energy Performance Contract (EPC), use this link below:

<https://www.hud.gov/sites/documents/EPC-COCC.PDF>.

### **Adjusting the Rolling Base when Units are Removed from Inventory**

When a PHA removes a unit from inventory and there is less than full 12-month consumption in the reporting period, consumption for these units shall be removed from Line 1 of form HUD-52722. The consumption for the removed unit is also reduced from the rolling base. Access guidance on how to adjust the rolling base when units are removed from inventory at: [https://www.hud.gov/sites/documents/RBA GUIDANCE.PDF](https://www.hud.gov/sites/documents/RBA_GUIDANCE.PDF).

### **Documentation Requirements**

PHAs are required to maintain "appropriate utility records, satisfactory to HUD", this includes documentation of all data used to calculate the form HUD-52722 (Per 24 CFR 990.170(f)). All records must be maintained by utility and by project for each 12-month period ending June 30th for the reporting period and each year in the rolling base.

Appropriate utility records must include:

- Copies of Utility Bills
- Utility Registers that can be provided to HUD in Excel (or equivalent electronic spreadsheet format).

Utility Registers must include:

- Project #
- Meter # [For metered utilities (e.g., electricity, water, natural gas, propane)]
- Unit of Measure
- Consumption Amount
- Cost

Failure to maintain appropriate utility records, and/or the failure to provide HUD with adequate documentation when requested, may result in HUD initiated adjustments to the form HUD-52722 data and/or calculations.

### **Data Distortions on form HUD-52722**

A PHA/project must report its rolling base so as not to materially distort the rolling base period. Many events trigger the need for an adjustment to the rolling base periods, including (but not limited to) changes to the number of units in a project or changes between PHA paid and resident paid utilities, broken meters, water leaks, changes to the units of measure, incomplete billing and documentation, interrupted service, or any event that leads to a large, unexpected decline in utility consumption. Regardless of the cause of the data distortion, a PHA must adjust their rolling base periods to consumption levels that are directly comparable to the actual current year consumption.

Unexplained drastic declines in actual consumption compared to the rolling base distorts the UEL calculation by triggering the 75/25% incentives, which pays the PHAs for 75% of their saving from unused utility consumption. Anomalous consumption data can lead to large overpayments.

For example: A project reports a significant decline in water/sewer consumption, they have taken no action to curb consumption and maintain the same number of occupied units. The PHA reviews their utility register and

finds they have accurately reported what they were billed, however they cannot document why their consumption declined. The PHA must adjust their rolling base periods to reflect the same lower number they are reporting in Line 01 Actual Consumption. Overpayments made for failure to adjust the rolling base will be repaid to the Department.

### **Unaddressed data distortions on form HUD-52722**

HUD will adjust the UEL calculation or submitted data to correct for any error or data anomaly detected in the form HUD-52722, as authorized by 24 CFR 990.170, 24 CFR 990.180, 24 CFR 990.200.

HUD will adjust the form HUD-52722 when a PHA is unable to provide proper documentation, and when proper documentation has been provided but the submitted data distorts the UEL calculation. HUD may adjust any part of the form HUD-52722, including (but not limited to) current year consumption, rolling base year consumption, and utility incentive eligibility.

### **The Rate Reduction Incentive**

The Rate Reduction Incentive (RRI) is a financial incentive for PHAs that pursue special and significant efforts beyond what is required by statute or regulation to reduce their utility rate. The PHA's action must exceed the activities required by statute and/or regulation. Pursuant to HUD regulation 24 CFR 990.185(b), "If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals, or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain one-half the annual savings realized from these actions." Guidance for RRI, including deadlines, is provided by Notice PIH-2023-17. In order for the PHA to claim an RRI, the PHA must have received a signed RRI Approval Letter from HUD for eligible funding year and is then eligible to claim the exact amount of the approved RRI on their Form HUD-52722 on the "Rate Reduction Incentive" line (line no. 23) for each approved AMP.

### **The Small Rural Frozen Rolling Base Program**

This three-year period known as the Small and Rural Frozen Rolling Base (SR-FRB) allows eligible PHAs to elect to have the UEL portion of its operating subsidy grant formula calculated using the average annual consumption for the most recent three-year period for a period of up to 20 years. Details on the requirements of the program can be found in Notice PIH-2022-32 (SR-FRB implementation Notice).

### **Electing to Participate in the SR-FRB Program**

Interested eligible PHAs must elect to participate through the Operating Fund Web Portal. PHAs make their election through the SR-FRB submodule which is found in the Energy Incentives module. The deadline for a PHA to make an election is through September 21, 2023, at 5:00 p.m. eastern time.

As identified in Section 4 of Notice PIH-2022-32, when electing to participate in the SRFRB program, PHAs may make one-time heating degree day adjustments to the SR-FRB. After the initial election the PHA may adjust for unit or building removal, change in resident responsibility for utilities, or change in fuel source. To the extent that the PHA is seeking an adjustment to the SR-FRB, it must submit documentation required by Notice PIH-2022-32, or as otherwise needed to establish how the PHA adjusted the SR-FRB. HUD reviews the PHAs' submissions received in Operating Fund Web Portal in accordance with the requirements of Notice PIH-2022-32. If the submission complies with program requirements, HUD will update the rolling base data in the form HUD-52722.

### **Adding Utilities to Existing SR-FRB Participation**

PHAs may elect to add additional utilities in future funding years within the 20-year term. PHAs must elect to add additional utilities in the Operating Fund Web Portal. PHAs must submit their election to add utilities by the deadline for making an initial election identified above. HUD reviews the PHAs' submissions in accordance

with the requirements of Notice PIH-2022-32 Where such PHAs submissions comply with program requirements, HUD will update the prepopulated rolling base data in the form HUD-52722.

### **Exiting the SR-FRB Program**

PHAs participating in SR-FRB program may remove a project or projects from participation in the SR-FRB through the Operating Fund Web Portal as specified in Notice PIH-2022-32. PHAs must submit their request to remove the project or projects from the SR-FRB program by the deadline specified in the Annual Operating Fund Notice. As identified in Section 4 of the SR-FRB Notice PIH-2022-32, projects that leave the SR-FRB program may not reenter the program until after the waiting period.

### **Exclusion of Trash Collection Cost from the UEL**

The UEL includes the following utilities: gas, electric, heating fuels, water, and sewer service consistent with the definitions at 24 CFR 990.115. Trash collection cost must not be included in the UEL calculation in form HUD-52722. PHA-paid trash collection cost is included in the pre-populated PEL PUM formula element. The [Harvard Cost Study](#) PEL model acknowledges “Trash removal expenses are treated as a maintenance expense and not a utility expense in the Chart of Accounts for public housing.” Where waste management companies bill trash collection charges to individual units, PHAs may include trash collection service fees in the tenant utility allowance stipulated in 24 CFR part 965, subpart E.

### **Exclusion of Delinquent Resident Paid Utilities from the UEL**

A PHA may choose to pay a resident’s overdue utility bill, however they may not include the cost or consumption for these utilities in the HUD-52722.<sup>3</sup>

## **C. Formula Income**

Formula income is an estimate of a PHA’s rental revenue. The CY 2024 per unit month (PUM) formula income will be pre-populated based on the PHA’s approved FY 2022 FASS-PH FDS submission when available. FY 2022 financial data must be used when available. The PUM formula income is calculated in two steps. Step 1: divide the Net Tenant Rental Revenue by Unit Months Leased (UMLs). Step 2: multiply the PUM formula income (determined in Step 1) by the CY 2024 formula income inflation factor. Mixed Finance projects that do not submit Net Tenant Rental Revenue or UMLs in their FDS submission must submit an audited financial statement (AFS) and 12 months’ rent roll data from the project’s owner entity whenever available, along with its submission of operating fund 22/23 Forms to support the formula income amount included on form HUD-52723. The inflation factor used for mixed finance projects will always be based upon the Fiscal Year End (FYE) of December 31, as the FYE of owner entities for tax credit projects is always December 31. This may differ from the PHA’s FYE. Guidance on how the formula income inflation factor is derived and the formula income methodology are posted on the CY 2024 Operating Subsidy Grant Processing webpage.

### **Energy Performance Contracts**

Special guidance for capturing the resident-paid utilities incentive in a HUD-approved energy performance contract on form HUD-52723 (Section 3, Part B, Line 02, Resident Paid Utility Energy Performance Contract Benefit) is on the CY 2024 Operating Fund Processing Web Page.

### **Jobs Plus Earned Income Disregard (JPEID)**

A PHA’s annual formula income may be adjusted if the PHA participates in the Jobs Plus program. Since HUD pre-populates formula income with data from the FDS, the JPEID results in an increase to the operating subsidy

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<sup>3</sup> [Public Housing Occupancy Guidebook](#), Section 4.2 Other Common Practices for Resident-Paid Utilities and Utility Allowances.

grant. PHAs are not permitted to receive operating subsidy grant amounts based on rent not collected due to income disregarded while administering a Jobs Plus program (i.e., the JPEID). After submission HUD will make a manual adjustment to a PHA's forms HUD-52723. Detailed guidance on the methodology used to make JPEID related adjustments to formula income will be provided to PHAs during the funding year.

The above noted adjustment does not apply to MTW PHAs subject to an Alternative operating subsidy grant formula without FDS data as part of their formula.

#### **D. Self-Sufficiency Services**

The Family Self-Sufficiency (FSS) program enables families assisted through Public Housing programs to increase their earned income and reduce their dependency on social services and rental subsidies. Under the FSS program, families living in low-income housing can choose to enter into a contract and are provided opportunities for education, job training counseling, and other forms of social service assistance to develop the necessary skills required to achieve self-sufficiency. Escrow accounts are established for FSS participants by the PHA.

As the skills of a participant increases, their earnings are also likely to increase. This results in an increase in the participant's rent. Under the FSS program, the PHA places the rent increase into an escrow account. Provisions of operating subsidy grant amounts to the PHA for its FSS escrow payments are through an adjustment to formula income in the calculation of the operating subsidy grant on form HUD-52723. PHAs must reduce the tenant rent portion of formula income (on form HUD-52722) by the amount of its FSS escrow payments. PHAs should enter appropriate comments in the comment section of form HUD-52723 when FSS escrow adjustments are made. A PHA must maintain supporting documentation of how it determined the decrease in formula income and submit the documentation to the Field Office upon submission of its 22/23 Forms. The Field Office uses the supporting documents to validate the decrease to formula income.

#### **E. Mixed Finance Modernization**

Mixed finance development can involve modernization rather than new construction. Mixed finance modernization often involves the use of Low-Income Housing Tax Credits (LIHTC) to modernize an existing public housing project. Because of LIHTC rules, ownership of the existing public housing project must be transferred to the new owner entity. This requires the project be removed from inventory (IMS-PIC) via a Section 18 disposition application, then added back to inventory (IMS-PIC) via a development proposal. Such projects are subject to 24 CFR 905.304(a)(2) and retain their DOFA date that existed prior to modernization as described in 24 CFR 905.604.

#### **Impact on Operating Subsidy Grants**

Public housing units disposed for mixed finance modernization in the exiting project are **not eligible for ARF**. When the PHA submits the Section 18 disposition application via IMS-PIC, the PHA selects the category "Mixed Finance MOD-REHAB" as the type of units included in the mixed finance modernization development proposal.

Immediately upon closing PHAs should add the new project and enter the removal date for the old project into IMS-PIC. Once the work that required the unit to be vacant has been completed, the unit must be re-occupied by an eligible family or placed in vacant status even if additional modernization work continues.

#### **Designation of Units as Vacant for Modernization**

PHAs using mixed finance modernization to modernize public housing units may submit a request to their Field Office to place any units that must remain vacant to undertake the planned modernization work into the approved vacancy status of Vacant for Modernization. See Notice PIH-2021-35 for additional information on the Vacant for Modernization Status.

Adding the new project to IMS-PIC timely is critical to maintaining uninterrupted funding. A job aid describing how to add a new project to IMS-PIC can be found here:

[https://www.hud.gov/sites/dfiles/PIH/documents/building\\_unit\\_uploadjobaid.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/building_unit_uploadjobaid.pdf) .

### **Add-ons**

Add-ons include the following types of costs: independent audit, PILOTs, asset management fees, information technology fees, ARFs, Elderly/Disabled Service Coordinator (EDSC), FSS program [costs] (described earlier under Formula Income), EPCs, and Resident Participation.

### **Cost of Independent Audit**

Independent audit cost is reported for the Operating Subsidy Grant Program when required by the Single Audit Act or when a single audit is not required and the PHA elects to have a financial statement audit prepared. Once audit costs are included in a funding eligibility calculation, the PHA is required to complete an audit for the matching PHA Fiscal Year and submit it to HUD. Audits are submitted electronically in accordance with the Uniform Financial Reporting Standards (24 CFR part 5, subpart H).

A project in which operating subsidy grant eligibility is determined to be zero is still eligible to receive an operating subsidy grant amount equal to its most recent audit costs pursuant to 24 CFR 990.190(d), subject to proration. This may occur when program expenses (PEL + UEL) + Add-ons – Formula Income are equal to or less than zero.

Project audit costs are pre-populated in the form HUD-52723 when CY 2022 FDS data is available. Where a PHA has a more recent actual audit cost than the pre-populated amount, it may replace that amount with the most recently paid amount and provide the payment documentation. If the audit cost is not pre-populated, the PHA shall report its most recent actual audit cost and attach proof of payment when submitting CY 2024 form HUD-52723.

For mixed finance projects with both ACC and non-ACC units, the audit costs are prorated to the amount allocable to ACC Public Housing units. The amount is based on the ratio of ACC units divided by total units.

$$\text{Ratio} = \text{ACC units} \div (\text{ACC units} + \text{non-ACC units})$$

### **PILOT**

For CY 2024, project PILOT amounts are calculated and pre-populated in form HUD-52723 based upon approved CY 2022 FASS-PH FDS data. If a PHA submits form HUD-52723 with a project's PILOT amount greater than the amount pre-populated, the PHA must attach proof of payment with the submission.

Regulatory requirements at 24 CFR 990.190(c) stipulate that “each PHA will receive an amount for PILOT in accordance with Section 6(d) of the 1937 Act, based on its cooperation agreement or its latest actual PILOT payment.” Section 6(d) of the 1937 Act specifies the PILOT is equal to “10 per centum of the sum of the shelter rents charged in such project, or such lesser amount as (i) is prescribed by State law, or (ii) is agreed to by the local governing body in its agreement for local cooperation with the public housing agency required under Section 5(e)(2) of this Act, or (iii) is due to failure of a local public body or bodies other than the PHA to perform any obligation under such agreement.” PILOT is pre-populated in form HUD-52723 by calculating ten percent of shelter rents (i.e., rent less utilities). If one of the lesser amounts identified in (i), (ii) or (iii) above apply, the PHA overrides the pre-populated amount with the lesser amount. For existing projects, the following line items from the Low Rent Public Housing column of the project's audited FASS-PH FDS submission are used to calculate the PILOT:

- 70300 Net Tenant Rental Revenue
- 93100 Water
- 93200 Electricity
- 93300 Gas
- 93400 Fuel
- 93600 Sewer
- 93800 Other Utilities

## **Pilot Calculation**

$$\text{PILOT} = [\text{Line 70300} - (\text{Lines: 93100} + \text{93200} + \text{93300} + \text{93400} + \text{93600} + \text{93800})] \times 0.10$$

For mixed finance projects the PILOT may not be pre-populated, in which case the PHA submits the owner entity's audited financial statement to the Field Office when submitting CY 2024 form HUD-52723. For mixed finance projects with both ACC and non-ACC units, the PILOT may need to be prorated to determine the amount allocable to public housing units. This happens only when both non-ACC and ACC units are subject to PILOT. Public housing units paying real estate taxes and not subject to PILOT, may not include PILOT in its operating subsidy grant calculation.

## **Asset Management Fee**

PHAs with more than 400 public housing units under ACC must comply with asset management requirements under 24 CFR 990.255 - 990.290 (Subpart H). PHAs not in compliance with asset management requirements are not eligible for the asset management fee pursuant to 24 CFR 990.190(f) or stop loss pursuant to guidance in Notices PIH-2007-16 and PIH-2006-35, as amended; and regulations at 24 CFR 990.230(d).

Asset management fees are determined as follows: (1) PHAs with at least 250 units are eligible for a \$4 per unit asset management fee for each month the project is subject to the ACC and in management status; and (2) PHAs with fewer than 250 units that elected to transition to asset management are eligible for a \$2 per unit asset management fee for each month the project is subject to the ACC and in management status. PHAs with only one project, regardless of number of units, are not eligible for an asset management fee pursuant to 24 CFR 990.190(f). MTW agencies' eligibility for asset management fees is subject to the terms of their MTW agreement. PHAs with one project may continue to receive stop loss based on compliance with the limited asset management requirements of their stop loss approval. For further explanation, refer to: <https://www.hud.gov/sites/dfiles/PIH/documents/TransitionStopLossAssetmgmtGuidance.pdf>.

## **Information Technology Fee**

In accordance with 24 CFR 990.190(g), operating subsidy grant calculations include \$2 PUM for costs attributable to information technology based on the total number of ACC units in management status.

## **Asset Repositioning Fee (ARF)**

PHAs must follow regulatory requirements at 24 CFR 990.190(h). PHAs must ensure that IMS-PIC data is accurate in calculating their ARF eligibility. Critical data elements include the HUD demolition/disposition approval date. Additional elements include Days to Relocation in the Demolition and Disposition (Demo/Dispo) module and End of Participation (EOP) of the first move out after the relocation date. PHAs should work with their Field Office to make any needed corrections. Modifications to the Demo/Dispo module should conform with guidance in Notice PIH-2021-37. ARF is only available for dispositions or demolitions conducted under 24 CFR part 970.



When a unit is eligible for ARF, PHAs should move any unit months used to calculate ARF to Section 2 Column A, Line 12 of the form HUD-52723 except as noted below. After ARF eligibility ends, if the units are not yet removed from IMS-PIC, they are reported in Column A, Line 13.

Section 3, Line 14 of form HUD-52723 is pre-populated with ARF eligibility calculated based on IMS-PIC data. However, PHAs must confirm the accuracy of this data element and revise it as needed prior to submitting their form HUD-52723. It is especially important to review the ARF calculation in the first year of ARF eligibility, because after the first year of eligibility PHAs may not change data elements used in the calculation. PHAs must submit supporting documentation detailing the ARF calculation for the requested amount.

When Section 3, Line 14 of form HUD-52723 must be modified, in addition to changing the pre-populated data in Section 3 Line 14, unit status data in Section 2 of form HUD-52723 may also need to be changed. If the underlying IMS-PIC data is inaccurate, the Field Office should work with the PHA and the Special Application Center (SAC) to correct the data. (Field Office should follow the ARF Standard Operating Procedures (SOP) found in the FMD SharePoint site). To initiate corrections, the PHA submits documentation required by its Field Office along with form HUD-52723.

The PHA should present a spreadsheet showing the ARF eligibility calculation and related information, including:

- Project number and Demo/Dispo application number.
- Date of the approval letter.
- Number of days to relocate after the approval letter is issued and the resulting planned relocation start date.
- The first move out after the planned relocation start date consistent with the EOP in IMS-PIC or a statement that all units were vacant on the date of the approval letter, or the planned relocation start date.
- ARF unit months for the project or building(s) which equals the number of ARF eligible months multiplied by the number of ARF eligible units; and
- Detailed calculation of ARF funding for each year of eligibility, including ARF unit months, the PEL, and the PEL inflation factor.

PHAs must revise their form HUD-52723 submissions to reflect changes in eligibility (based on the removal of units) on a quarterly basis. If the entire project is ARF eligible after the expiration of ARF eligibility the project is not eligible for the non-ARF portions of the operating subsidy formula.

If a project is only partially ARF eligible, the units that are not ARF eligible remain eligible for non-ARF portions of the operating subsidy formula.

### **Elderly/Disabled Service Coordinator (EDSC) Program**

For CY 2024, the public housing share of reasonable costs for salary, fringe benefits, and administrative costs for the EDSC Program is eligible for operating subsidy grant. Only PHAs previously receiving EDSC funding are eligible. Eligibility is posted on the CY 2024 Operating Fund Processing Web Page.

Total EDSC eligibility increases annually up to the amount of the annual inflation factor in Section 3, Part A, Line 02 of form HUD-52723. Eligible PHAs should enter the eligibility amount in Section 3, Part A, Line 07 of form HUD-52723. This "Self-sufficiency" line is restricted to the EDSC program and does not include Resident Opportunity and Self-Sufficiency (ROSS) funding.

If a PHA's public housing inventory (i.e., the number of units in IMS-PIC that are subject to the ACC) decreases (e.g., due to Rental Assistance Demonstration (RAD) conversion), the PHA's EDSC (funded as an operating subsidy grant add-on) decreases proportionately. The PHA must make the proportionate decrease in their 52723 forms. In the case of transfers, consolidations, or mergers:

- If a PHA is eligible for the EDSC program and elects to consolidate or merge with another PHA, eligibility is maintained. The EDSC eligibility amount is allocated to the receiving PHA.
- If there is a transfer of projects between PHAs, EDSC eligibility, which is at a PHA level, is not transferred.

### **Energy Performance Contracts (EPC)**

With a HUD-approved EPC, a PHA may qualify for certain incentives under the operating subsidy formula described in 24 CFR 990.185. In order to claim EPC incentives, the PHA must have unpaid EPC debt on the current EPC. If the EPC debt is paid, the PHA is not eligible for the EPC Incentive toward that EPC.

### **Annual M&V Reporting**

Per Notice PIH-2011-36, an EPC M&V (Energy Performance Contract Measurement and Verification) Report and associated documentation depending on EPC incentive (Frozen Rolling Base (FRB), Add-On Subsidy (AOS), or Resident Paid Utility (RPU) must be submitted to HUD by April 30th each year. The annual verification of EPC project savings is critical to ensuring that the housing authority has sufficient annual EPC project savings to cover annual EPC project costs as determined in the Energy Services Agreement and to assess annual EPC incentives provided through the operating fund. HUD may remove EPC incentives from the PHA's Operating Subsidy form associated with the EPC if an acceptable M&V report is not submitted within this time frame.

### **AOS EPC Incentive**

Pursuant to 24 CFR 990.190(b), a PHA with a HUD-approved EPC for the AOS incentive is eligible to enter the amount of the AOS incentive in Section 3, Part A, Line 8 for energy loan amortization. Copies of EPC approval letters (and amended versions) must be retained by the PHA and Field Office for the life of the EPC. MTW PHAs with self-approval authority in their Standard MTW Agreement must submit a request to their Field Office describing the type and term of EPC benefits claimed, and a list of projects for which the benefits are claimed.

If the cost savings for the AOS reporting period in any year during the contract period are less than the amount of AOS incentive claimed, the deficiency will be offset against the PHA's operating subsidy grant eligibility for the PHA's next fiscal year. The difference is offset by entering a negative number Section 3, Part C, Line 3 "Other", of the form HUD-52723. There are methods to compute the AOS based on the M&V Methods: Option A and Option C.

- Option A: The AOS Option A uses stipulated consumption savings that are based on acceptable operational, or performance parameters must be approved in the EPC Approval Letter.  $\text{AOS Option A Savings} = (\text{Stipulated Consumption Savings}) \times (\text{Authority-Paid Utility Rate})$
- Option C: The AOS Option C uses a Reference Baseline for savings comparison, which is determined by the average of historical consumptions (found on Lines 02 through 04 on the Form HUD-52722). The Reference Baseline is not frozen on the Form HUD-52722 but is identified in the EPC Approval letter and is only used to calculate EPC Savings.  $\text{AOS Option C Savings} = (\text{Reference Baseline} - \text{Current Consumption}) \times (\text{Form HUD-52722 Utility Rate})$

### **FRB and RPU EPC Incentives**

If the EPC Incentive is FRB and/or RPU, documentation should be submitted to the HUD FO that identifies if at least 75% of the energy savings from the incentives is used for debt service or other eligible EPC Project Costs.

## **Funding for Resident Participation Activities**

Pursuant to 24 CFR 990.190(e), PHA operating subsidy grant calculations include \$25 per occupied unit, per year for resident participation activities, including but not limited to those described in 24 CFR part 964. A unit is eligible to receive resident participation funding if it is occupied by a public housing resident or occupied by a non-assisted PHA employee, or police officer or other security personnel who is not otherwise eligible for public housing. In any fiscal year, if appropriations are not sufficient to meet all funding requirements under this part, then the resident participation component of the formula is adjusted accordingly.

## **14. ENVIRONMENTAL REQUIREMENTS**

As noted in the Operating Fund Rule at 24 CFR 990.116, environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and implementing regulations at 24 CFR parts 50 and 58 are applicable for the Operating Fund Program.

## **15. MOVING TO WORK PHAS WITH AN ALTERNATIVE OPERATING SUBSIDY GRANT FORMULA AGREEMENT (ATTACHMENT)**

MTW PHAs with alternative operating subsidy grant formula agreements submit requests for operating subsidy grants in accordance with their MTW Agreements – Attachment A. In cases where this involves submitting one request on a PHA-level, form HUD-52722 is not submitted but PHAs must submit the following to their Field Offices:

- Form HUD-52723: Enter data in accordance with the MTW agreement, which generally includes entries for Section 1; and Section 3, Part C, Line 01.

Documentation supporting the Agreement's formula (i.e., the PHA's calculation workbook for the CY 2024 operating subsidy grant, which must include unit months data for the reporting period, add-on subsidies, non-utility and utility subsidies, and the RAD adjustment (if any) for converted units as referenced in Attachment A of the MTW Agreement). Supporting documentation must be submitted with form HUD-52723 by the scheduled deadline.

MTW PHAs whose submissions are not limited to one form will have their electronic form pre-populated in the same manner as regular formula PHAs and shall complete and submit all sections of forms HUD-52723 and HUD-52722 on a project-level basis in the same manner as regular formula PHAs.

## **16. THE GENERAL DEPOSITORY AGREEMENT – FORM HUD-51999**

In accordance with U.S. Treasury requirements and 2 CFR part 200, PHAs are subject to cash management requirements. Further, the ACC requires PHAs to place public housing funds in accounts subject to a General Depository Agreement (GDA) – form HUD-51999.

When PHAs enter into depository agreements with financial institutions for accounts holding public housing funds such as operating subsidy grants, program income (rental and non-rental income), and disposition proceeds (PHA deposits), PHAs are required to have a GDA with the financial institution that establishes the terms and conditions dictating the investment, and collateral and securitization requirements for the PHA's deposits.

A GDA ensures that all the PHA's deposits or funds otherwise associated with public housing for purposes of public housing, remain available for its required purpose. This is accomplished by requiring such financial grant assistance to be deposited into interest-bearing accounts at financial institutions whose deposits and accounts

are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). Moreover, whenever PHA deposits exceed the insured limits, the GDA requires those PHA deposits to be fully and continuously collateralized with Treasury approved investments. HUD generally does not approve modifications to the GDA, but if a PHA wants to request approval to modify or add an addendum to the GDA it must request a HUD waiver under 24 CFR 5.110 and follow the usual HUD regulatory waiver process detailed in Notice PIH-2018-19.

## 17. APPEALS

Pursuant to 24 CFR 990.240, appeals are voluntary and cover the PHA's entire portfolio, not single projects. The Assistant Secretary for Public and Indian Housing has the discretion to accept appeals that are less than an entire portfolio for PHAs with more than 5,000 public housing units. All other appeals must be based on an impact that affects the entire PHA, not an impact to a single project or set of projects. Any appeals that address single projects and not the entire portfolio will be denied.

The Operating Fund provided for appeals of Formula Income for economic hardship. Such appeals were permitted in the first two years of the Operating Fund program, during which period Formula Income was frozen. Because Formula Income is no longer frozen, appeals of Formula Income for economic hardship are no longer permitted.

MTW PHAs with Alternative Operating Subsidy (AOS) formulas may not appeal any part of the AOS formula, as the AOS formula is not derived from 24 CFR 990.

### Four Types of Appeals and Requirements under 24 CFR 990.245

1. **Streamlined appeal:** Requires PHAs to demonstrate a blatant and objective flaw in the application of a specific operating subsidy formula component. This appeal must be submitted once annually and must be submitted for new projects entering a PHA's inventory within one year of the applicable Date of Full Availability (DOFA).
2. **Appeal for changing market conditions:** PHAs may appeal to receive operating subsidy grant funding for vacant units due to changing market conditions after the PHA undertakes aggressive marketing and outreach measures to rent these units. The vacancies cannot be the result of action or inaction by PHA management, but an appeal may be approved for changing market conditions if a PHA is in an area suffering economic dislocations. While normal economic cycles may increase the number of low-income households in an area and increase demand for public housing, severe economic dislocation might lead to population loss significant enough to cause a shortage of applicants, even with aggressive marketing and outreach. Market conditions can be approved at any time, but not retroactively. See Notice PIH-2021-35 for more information on this appeal type.

The other two types of appeals are limited to PEL-related issues. They are Specific Local Conditions and Actual Project Costs. These two specific appeals are omitted from the Operating Fund appeals process because of regulatory restrictions for operating funds.

The PEL is a pre-populated formula data that cannot be edited by Field Offices or PHAs (see Table 1). However, a PHA may appeal to a pre-populated PEL based on (a) effects of specific local conditions, and (b) actual project cost data. The PEL represents the normal operating expenses of well-run Public Housing projects, excluding utilities and add-ons. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses such as property insurance. Stop Loss eligibility stops the reduction of the amount PHAs received for the Allowable Expense Level (AEL) under the Performance Funding System (PFS), which was the precursor to the Operating Fund Program, and the Operating Funds' PEL, thereby increasing the PEL. Thus, Stop Loss must be considered part of the PEL for the

purpose of PEL appeals. For example, if a project's Form HUD-52723 shows PEL eligibility of \$1,000,000, and Stop Loss of \$100,000, for the purpose of the PEL appeal the PEL would be considered \$1,100,000.

3. **Appeal for specific local conditions:** This appeal requires the PHA to demonstrate that the PEL fails to reflect specific local conditions. To be eligible, the affected PHA must demonstrate, using an independent cost assessment, that the PEL is not accurate for comparable properties in the PHA's market area, with a variance of ten percent or greater at the PHA's public housing portfolio level. The cost of services for the independent cost assessment is paid by the appellant PHA. Appeals for specific local conditions must assume that 100% of available unit months, other than those eligible for ARF, receive full Operating Subsidy eligibility. This appeal must be submitted once annually and must be submitted for new projects entering a PHA's inventory within one year of the applicable Date of Full Availability (DOFA).
4. **Appeal to substitute actual project cost data:** A PHA may appeal its PEL if it can produce actual project cost data derived from actual asset management as outlined in 24 CFR 990 Subpart H, for a period of at least two years. Only data from audited FDS submissions approved by HUD may be used for this type of appeal. For this type of appeal, the PHA must also submit an independent cost assessment, paid for by the PHA. Because adjustments must be made to the audited FDS data, the audit itself does not satisfy the requirement for an independent cost assessment. Appeals to substitute actual project cost data must assume that 100% of available unit months, other than those eligible for ARF, receive full Operating Subsidy eligibility.

### Appeal Requirements

For streamlined appeals, the PHA must describe the flaw and submit supporting documentation.

For "specific local conditions" appeals and "substitute actual project cost data" appeals, the PHA must acquire, at its own expense, an independent cost assessment. The cost assessment must assume full funding levels. Assessments must fully disclose any adjustments made to the FDS data including the amount of each adjustment, the reason for each adjustment, the adjustment method and citation of source documents. Where potentially necessary adjustments identified in this Notice are not made, the Assessment must provide a justification. Supporting documentation must be included if necessary to provide complete understanding of the adjustments.

Assessments must present the entire PHA's portfolio in a table format and include the data identified below for each individual project.

	Specific Local Conditions	Actual Costs
Occupancy Type	X	N/A
Building Type(s)	X	N/A
Number of Units	X	For each year in Assessment
Current PEL Per Unit Month	X	For each year in assessment
Requested PEL Per Unit Month	X	X

For "specific local conditions" appeals the PHAs' independent cost assessor's report must compare costs for comparable affordable housing properties (for cost items included in the PEL) to the PEL for each of their public housing projects. The independent assessment must derive a portfolio level PEL PUM by weighting the PEL of each project based upon the number of units. Similarly, the independent cost assessment must weight the proposed PEL for each project based upon comparable property types of each building by the number of units in the buildings for each property type. For example, if there were 60 units in row/townhouse properties, and 40 in walkup/garden properties, the proposed PEL PUM for row/townhouse would be weighted 60%, and

the proposed PEL PUM for walkup/garden would be weighted 40%. The person performing the assessment must have appropriate knowledge of multifamily operating costs within the local market.

Data cited data in the assessment must be verifiable by HUD with complete source identification. Itemized comparative data must include locality, occupancy type, building type. Adjustments made to the cited data to make it comparable to cost elements included in the PEL. (Refer to Public and Indian Housing IMS-PIC Development Submodule User Manual, pages 47, for definitions of building types.)

For “actual costs” appeals the independent cost assessor’s report must adjust the FDS data such that only PEL related costs are included. The PEL represents the normal expenses to operate Public Housing projects, excluding utilities and add-ons. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses such as property insurance. Any FDS reported costs not allocable to the PEL must be removed from the analysis.

As such, operating costs reported in the FDS should be adjusted to back out costs attributable to utilities (UEL) and add-ons. The FDS data should be adjusted to remove any non-front line operating cost. Front line costs are defined in the Supplement to HUD Handbook 7475.1 REV., CHG-1, Financial Management Handbook. PEL costs do not include costs paid for by the Capital Fund. The FDS operating expense data should be adjusted to remove any expensed item paid for with Capital Funds.

FDS operating expense data for mixed finance projects typically only includes Operating Funds transferred to the owner entity. Non-PEL elements of the grant funds must be backed out of the transfer. To accomplish this, utilizing data from the Operating Subsidy forms (Form 52722 and Form 52723) for the year in question, undertake the following calculation:

- Add the total PEL, UEL, add-ons, and transition funding to derive total expenses.
- Divide the PEL by total expenses) to derive the PEL expense percentage (this is the percentage of total expenses attributable to the PEL
- Multiply the amount transferred to the owner entity that is reported as an operating expense in the FDS by the PEL expense percentage.
- Subtract any Capital Funds transferred to the Owner entity that is reported as an operating expense in the FDS.
- The result is the amount of funds transferred to the owner entity reported as an expense in the FDS that can be included in the cost assessment.

Bad debt is contra-revenue. The Operating Fund Formula, created via negotiated rule making, did not factor collection losses into Formula Income, nor is bad debt part of the PEL. Given this, the FDS must be adjusted to remove Bad Debt expenses.

The PEL assumes limited employee benefits. The Harvard Cost study indicated that the author’s do “not feel that even when state and local practices (either by custom or by statute) result in higher than private operator levels of wages and benefits that that is necessarily a cost to be included in a federal operating formula. Even when local or state benefit packages are mandated, PHAs are free to compete with lower wages to offset the higher benefits.” The submission must identify the costs associated with salaries, and separately, employee benefits. Employee benefits include payroll taxes, state/federal unemployment insurance, health insurance, retirement (separately identifying pensions and other post-employment benefits to the extent applicable), and disability insurance, but not workers compensation. HUD will only consider staff and employee benefit costs consistent with the norms identified above. PHAs should adjust their FDS data where it exceeds these norms.

Energy performance contracts provide additional funding eligibility to PHAs in the form of EPC incentives included in the Formula. The EPC program is structured such that, if performing in accordance with the PHA’s



application, EPC costs are covered by incentives. Given the above, the FDS data must be adjusted to remove any EPC related costs. Such costs may include Measurement and Verification (M&V), equipment replacements, maintenance for equipment maintenance not covered under the PEL, resident training, and any other costs approved by HUD as part of the EPC.

PHAs report Income Statements for both the Capital Fund Program and Low Rent Public Housing. Only expenses for the Low Rent Program should be included in the PEL analysis.

The independent cost assessment must be included in the PHA's submission to HUD and must include comparable data.

PHA appeals for "changing market conditions" are to be submitted to the PIH Director and staff point of contact at the appropriate Field Office no later than the deadline for the PHA to submit its original operating subsidy grant submission for CY 2024.

"Streamlined," "local conditions," and "actual project cost data" appeals must be sent by email to [OBPHFMDHUD@hud.gov](mailto:OBPHFMDHUD@hud.gov) with the subject line "Appeal under 24 CFR 990.245." These appeals must be sent within 30 days of the PHA's initial submission of CY 2024 forms HUD-52722 and HUD-52723. The PHA also must provide a copy of the appeal to the PIH Field Office Director of Public Housing and staff point of contact.

Final appeal decisions will be issued no later than 15 days prior to the revision deadline. If a PEL appeal is granted, HUD will deploy the new 22/23 Forms to the Operating Fund Web Portal. The PHA must then submit revised forms HUD-52722 and HUD-52723 via the Portal by the revision deadline. After the form is processed, HUD will adjust the PHA's operating subsidy grant by the appropriate amount, which will be retroactive to the beginning of the year.

## **18. RENTAL ASSISTANCE DEMONSTRATION (RAD)**

### **Funding**

For units that convert, through the remainder of the first Calendar Year (i.e., the "Initial Year") in which a Housing Assistance Payment (HAP) contract is effective, operating subsidy grants will be obligated to the PHA for the Covered Project based on operating subsidy grant eligibility calculated as it normally is, without regard to the converted units<sup>4</sup> PHAs must submit forms HUD-52722 and HUD-52723 and follow the normal operating subsidy grant process (including revisions where corrections are needed) for the project for the Initial Year<sup>5</sup>.

The amount of operating subsidy grants that can be used for HAP payments during the initial year is capped at HUD's operating subsidy grant obligations to the project for the remainder of the year of conversion, prorated by the portion of units in the project that are converting and will be removed from IMS-PIC (operating subsidy transfer cap). In the year after the HAP effective date, the converted units shall not receive any further operating subsidy grant.

PHAs are reminded that they may not contribute public housing program funds to projects post-RAD conversion beyond the operating subsidy transfer cap identified above unless those public housing funds (operating subsidy and/or Capital Funds) have been identified in the RAD Conversion Commitment (RCC) and those public housing funds are converted at closing for Section 8 RAD purposes. When a unit is approved but not removed via Section 18 and subsequently converts through RAD, the unit will be identified in IMS-PIC as

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<sup>4</sup> For example, a RAD closing on December 10 will result in a HAP Contract that is effective on January 1 or February 1. For the remainder of the Calendar Year which includes the January 1 or February 1 date, this action will not impact operating subsidy grant.

<sup>5</sup> The HAP effective date is the day on which HAP payments begin.

approved for removal via Section 18 until it converts through RAD. Such units must be transferred to the RAD application in IMS-PIC immediately before the conversion occurs.

For partial conversions, the rolling base must be adjusted in the operating subsidy grant submission the year after the HAP effective date. Please see the instructions for form HUD-52722 (available on the CY 2024 Operating Subsidy Grant Processing Web Page, and via HUDCLIPS) for details on adjusting the rolling base. See the CY 2024 Operating Subsidy Grant Processing Web Page for further guidance on adjusting the rolling base when units are removed from inventory.

The following applies to RAD conversions with HAP effective dates in 2023 or before:

Projects that are fully converted through RAD with HAP effective dates in 2023 or before are not eligible for the CY 2024 operating subsidy grant.

For projects that are fully converted with HAP effective dates in 2023 or before if the conversion happened early in 2023, HUD will not deploy a 22/23 Tool for 2024 for the project. However, if the conversion happened late in 2023, HUD may deploy a 22/23 Tool and/or fund the project in error because of the timing of data availability. If a 22/23 Tool is deployed for a project for 2024, but that project fully converted and has a 2023 HAP effective date, the PHA must not submit the 22/23 Forms. If such a project is funded in 2024, the PHA must not draw down funds and must notify its Field Office that the project should not have been funded.

The PHA and Field Office must ensure that no EUMs for units that converted through RAD are included in the 22/23 Forms for projects that are partially converted with HAP effective dates in 2023 or before. For projects that close early in the year prior to the funding year, HUD will remove EUMs from the RAD units from Section 2 of the Form HUD-52723. In all instances, the Field Office and PHA must ensure that the EUMs from converted units are removed.

### **Designation of Units Converting through RAD as Vacant for Modernization**

Units in a project with a commitment to execute a HAP approval, which the PHA plans to modernize and are vacant because a PHA has not reoccupied them in preparation for modernization pursuant to a RAD conversion plan, can be considered as “units undergoing modernization,” provided it complies with 24 CFR 990.145. Such vacant units may be categorized as undergoing modernization for a maximum of two years (24 months) prior to RAD conversion (i.e., HAP effective date). See PIH Notice 2022-36 for more information on the unit status Vacant for Modernization.

Vacant units converting through RAD that will not be modernized are not eligible to be categorized as units undergoing modernization.

## **19. TURNKEY III PROJECTS**

Funding requests for the Turnkey III program that use form HUD-53087 “Calculation of Subsidies for Operations: Non-Rental Housing” are accepted only for projects/units under the final lease purchase agreement for closing out the program. These requests must have supporting documentation including ACC and active lease purchase agreements. New lease/purchase agreements will not be funded. A PHA needs to provide the status of the properties addressing the following:

- Are units still occupied by a family under an option to purchase under a homeownership agreement?
- What is the remaining term of the agreement?

If there is no effective contract with the residents and the PHA is under the Faircloth limit, the PHA may apply under the 24 CFR part 905 acquisition development method to make these properties public housing rental

units. These units will otherwise be ineligible for operating subsidy funding as Turnkey III units. Once the units are transitioned to regular public housing units, the PHA must ensure that the units IMS-PIC program type is changed to Low Rent. The submission deadline for Turnkey projects is the same as that for the initial submission of forms HUD-52723 and HUD-52722. Turnkey III submissions after the deadline will not be accepted and projects will be ineligible for funding that year.

## **20. ENVISION CENTER PARTICIPATION**

HUD EnVision Centers provide communities with a centralized hub for support in economic empowerment, educational advancement, health/wellness, as well as character and leadership development. EnVision Center Participation for the predominant use by public housing residents can be assisted with operating subsidy grants. A unit allocated for the center will be classified as one of the HUD-approved vacant units used for resident services, resident organization offices, and related activities such as self-sufficiency and anti-crime initiatives pursuant to 24 CFR 990.145(a)(2) and as such should be reported in Section 2, Line 06 of form HUD-52723.

## **21. THE FAIRCLOTH LIMIT**

Section 9(g)(3) of the United States Housing Act of 1937 (Faircloth Amendment) limits the number of public housing units that may receive public housing funding. The Faircloth Amendment stipulates that the Department cannot fund the construction or operation of new public housing units with Capital Funds or Operating Subsidy if the construction of those units would result in a net increase in the number of units the PHA owned, assisted, or operated as of October 1, 1999. This requirement is referred to as the Faircloth Limit. The Faircloth Limit is adjusted for PHA transfers of units under ACC, consolidations, and RAD removals. PHAs will not be funded for those units that exceed the posted Faircloth Limit and are responsible for reviewing Faircloth limits and notifying HUD if it believes its posted Faircloth Limit is in error.

The Faircloth Limit is determined by PIH's Capital Programs Division. Additional information on how the Capital Programs Division determines the Faircloth limit, can be found on the Capital Fund website at:

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/capfund](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/capfund).

Because the operating subsidy grant is calculated on an EUM basis, the Faircloth Limit is converted to unit months attributable to a funding year (the Faircloth Unit Month Limit) before being posted on the Operating Subsidy Grant Processing Web Page. Where the aggregate of unit months (Form HUD-52723 Section 2, Column A, Line 15 minus Line 4) for all a PHA's projects exceeds the Faircloth Unit Month Limit, the excess units must be removed from the PHA's operating subsidy grant forms.

In the absence of an IMS-PIC ticket which corrects the Faircloth violation, removal of excess units shall be accomplished by reducing Line 1 and Line 3 in Columns A, B, and C of Section 2 form HUD-52723, beginning with the most recently added project to inventory. If the total number of unit months in the most recently added projects is less than the excess units, Line 1 and Line 3 of the next newest project added to inventory shall be reduced in the same manner, until no excess units remain. If an IMS-PIC ticket exists that will correct the Faircloth violation, the unit status on form HUD-52723 should be updated to align with the IMS-PIC ticket. Likewise, if IMS-PIC has already been updated, the unit status on form HUD-52723 should be updated to align with the updated IMS-PIC data. It is important to note that appropriate adjustments need to be made to the EUMs on form HUD-52722 whenever units are being reduced on form HUD-52723.

## **22. PHA BOARD RESOLUTION**

Pursuant to 24 CFR 990.315, PHAs are required to prepare an operating budget and have it reviewed and approved by resolution by its Board of Commissioners. The PHA Board Resolution (the form HUD-52574) approving the PHA's operating budget must be submitted in the Operating Fund Web Portal. HUD will provide PHAs further guidance on the timing of their submission. Only one Board resolution needs to be submitted per

PHA, regardless of the number of projects. If the PHA has more than one project, insert the phrase “for all projects” in the first checkbox description. The checkbox then will read “Operating Budget for all projects approved by Board resolution on: [date].”

## **23. RECORD RETENTION**

HUD regulation at 24 CFR 990.325 requires PHAs to retain documents related to all financial management and activities funded under the operating subsidy grant for a period of five fiscal years after the fiscal year in which the funds were received. However, guidance in the Office of Management and Budget (OMB) super circular—2 CFR 200.333(b)—allows Federal agencies (including HUD) to extend the record-retention period for non-Federal entities if this is done in writing. Therefore, HUD reserves the right to extend the record-retention period beyond five fiscal years and will notify PHAs in writing when such extensions are warranted.

## **24. ACCOUNT CLOSING DATES**

Most Congressionally appropriated grant funds have restrictions on the timeframe by which they must be used. PHAs must expend operating subsidy grants by the account closing date. Any operating subsidy grant unexpended as of the account closing date must be returned to HUD.

PHAs should contact their Field Office for instructions on how to return funds. The table below identifies account closing dates for all operating subsidy grants which have not yet closed (exclusive of CARES Act and Shortfall Funding, which are subject to requirements identified in notices related to those initiatives). Grant years not identified in the table below are past their closing date.

<b>Fed Fiscal</b>	<b>Account Closing Date</b>
<b>FY 2017</b>	9/30/2023
<b>FY 2018</b>	9/30/2024
<b>FY 2019</b>	9/30/2025
<b>FY 2020</b>	9/30/2026
<b>FY 2021</b>	9/30/2029
<b>FY 2022</b>	9/30/2030
<b>FY 2023</b>	9/30/2031

## **25. FURTHER INFORMATION**

All questions from PHAs are to be referred to the appropriate Field Office.

## **26. PAPERWORK REDUCTION ACT**

The information collection requirements contained in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C.3520) and assigned OMB approval numbers 2577-0026, 2577-0029, 2577-0157 and 2577-0246. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB number.

## **27. PENALTY FOR FALSE CLAIMS AND STATEMENTS**

Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

*Richard J. Monocchio*

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Richard J. Monocchio  
Principal Deputy Assistant Secretary  
Office of Public and Indian Housing