



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 Office Directors  
Public Housing Program Center Directors  
Regional Directors  
Field Office Directors  
Resident Management Corporations

**Notice PIH 2017-27**

Issued: December 8, 2017

This notice remains in effect until amended, superseded or rescinded

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**Subject:** Public Housing Operating Subsidy Eligibility Calculations for Calendar Year (CY) 2018

**1. Purpose**

This notice provides public housing agencies (PHAs) with instructions for the calculation of operating subsidy eligibility for CY 2018.

**2. Background**

- A. HUD provides operating subsidies for public housing at the project level on a calendar year basis. PHAs must submit electronically separate operating subsidy calculations for each project identified in HUD's Inventory Management System/Public and Indian Housing (PIH) Information Center (IMS/PIC).
- B. PHAs enter unit status data into IMS/PIC, which HUD then uses to run the Operating Fund formula. Aside from normal unit turnover, HUD anticipates only limited unit status changes. However, PHAs must ensure that all data in their operating subsidy submissions are correct and work with their respective HUD Field Office (FO) to edit their unit status data.

Beginning in Federal Fiscal Year (FFY) 2008, Congress allowed PHAs with 400 or fewer public housing units to elect to be exempted from any asset management requirement imposed by HUD in connection with the Operating Fund rule. If this exemption is removed in the FFY 2018 appropriations, instructions for making modifications to requests for operating subsidy by previously-exempt PHAs will be posted on the CY 2018 Operating Subsidy Processing webpage. (See link below.)

[https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/am/of/opfnd2017](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/of/opfnd2017)

### **3. HUD's Initial Obligation of CY 2018 Operating Subsidy**

The initial obligation process for CY 2018 Operating Subsidy involves actions by HUD and PHAs. HUD will generate an inventory list identifying projects determined to be eligible for funding based on IMS/PIC building and unit data, and will notify PHAs when the list is available via the Financial Management Division's (FMD's) listserv. (PHAs can sign up to be on the FMD's listserv using the link below.) PHAs will review and validate the list or contact and advise their respective FO within 10 business days if there are any HUD errors (e.g., eligible projects missing from the list, or ineligible projects included in the list). HUD will use the validated inventory list (2018 Validated Inventory) to generate the HUD-52723 and HUD-52722 (also referred to as Excel Tools). PHAs will then use the Excel Tools to request CY 2018 Operating Subsidy. If HUD generates Excel Tools for a project that is not eligible, the PHA should not submit the Excel Tools. At the beginning of the year, when HUD funds projects based on an estimate of eligibility, only projects that are part of the 2018 Validated Inventory will receive funding.

#### ***Link to FMD Listserv Signup Webpage***

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

HUD will publish a submission schedule on the CY 2018 Operating Subsidy Processing web page. HUD's initial obligation of operating subsidy funding for CY 2018 may be based on estimates therefore, if a PHA finds that the estimated eligibility exceeds the project's actual eligibility for 2018, the PHA should not draw down any excess funds and should immediately notify the appropriate FO. HUD will recapture any funded amounts for any project deemed ineligible or any project overfunded based on incorrect estimates. Details of the methodology used to calculate the estimates will be posted on the CY 2018 Operating Subsidy Processing webpage.

### **4. General Operating Subsidy Submission Processing for CY 2018**

#### **A. Required Forms and Documentation**

For HUD to determine operating subsidy eligibility under the Operating Fund formula, PHAs must complete and submit the following electronic forms for each project:

- i. HUD-52723, Operating Fund Calculation of Operating Subsidy; and
- ii. HUD-52722, Operating Fund Calculation of Utilities Expense Level.

PHAs must also submit the following forms and documentation, as applicable:

- (a) Form SF-424, Application for Federal Assistance—required as part of the government-wide *e-grants* management initiative. The CY 2018 Operating Subsidy Processing webpage contains guidance on how to complete this form. Each PHA shall submit only one form SF-424. A PHA should submit the form via email to the appropriate FO by

scanning it and attaching it to the email. (A PHA may fax the form SF-424 with prior FO approval.)

PHAs must have a Dun and Bradstreet Universal Identifier Numbering System (DUNS) number as well as active registration in the System for Award Management (SAM; [www.sam.gov](http://www.sam.gov)) to receive funds from HUD's financial systems. If a PHA does not have a DUNS number, the CY 2018 Operating Subsidy Processing webpage provides directions on how to obtain one. **HUD will suspend or not obligate operating subsidy for PHAs that do not comply with the above requirements.**

- (b) Form 50071, Certification of Payments to Influence Federal Transactions. Each PHA shall submit only one Form 50071.
- (c) Other supporting documentation requested by the FO (must be submitted via email to the FO).

## **B. Submission Process**

Instructions for completing the Excel Tools and other required forms, a schedule identifying submission deadlines, as well as guidance materials related to various formula elements, will be posted on the CY 2018 Operating Subsidy Processing webpage. Failure to meet the submission deadline posted on the CY 2018 Subsidy Processing webpage may be interpreted as a rejection of the Operating Subsidy by the PHA.

**NOTE:** PHAs must submit the Excel Tools HUD-52723 and HUD-52722 to HUD regardless of whether they are prepared by the PHA's fee accountant or any other entity acting on behalf of the PHA. Fee accountants or entities other than the PHA are NOT to submit the Excel Tools directly to HUD.

## **C. Pre-populated Data**

To reduce PHA reporting burden and in accordance with 24 CFR 990.135(b)(2), information that PHAs provide to HUD's systems of record [including IMS/PIC and the Financial Assessment Subsystem – Public Housing (FASS-PH)] will be used to pre-populate the CY 2018 Excel Tools.

Unit status for the reporting period, *July 1, 2016 through June 30, 2017*, will be extracted from IMS/PIC, summarized at the project level and used to pre-populate the CY 2018 Excel Tools. Asset Repositioning Fee (ARF) eligibility will be determined based on IMS/PIC data and prepopulated into the HUD-52723. Unit status data from PIC will be modified based upon the ARF eligibility determinations. If the pre-populated data are incorrect, entries may be edited by the PHA and/or the FO in accordance with Table 1 and the instructions that follow.

**Table 1: CY 2018 Pre-populated Formula Data**

<b>Item Description</b>	<b>PHA Can Edit</b>	<b>FO Can Edit</b>
Project Number	No	No
Name of PHA	No	No
Address of PHA	No	No
ACC Number	No	Yes
DUNS Number	Yes	Yes
Total number of ACC units for the PHA	No	Yes
Unit status data: HUD-52723, Section 2, Categorization of Unit Months, Lines 01, 02, and 05 through 13	No	Yes
*Unit status data: HUD-52723, Section 2, Categorization of Unit Months Lines 03 and 04; Column B, Lines 6a and 17, Column B	Yes	Yes
Per Unit Month (PUM) project expense level (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
Asset Repositioning Fee: HUD-52723, Section 3, Line 14	Yes	Yes
PUM formula income	Yes	Yes
**Transition funding	No	No

\*In the 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.

\*\* PHAs that did not comply with asset management in the prior funding cycle, will not have transition funding pre-populated into their HUD-52723

**D. FO Changes to Categorization of Unit Months Pre-Populated Data**

When FOs implement changes to categorization of unit months pre-populated data, appropriate documentation from the PHA is required to demonstrate that pre-populated IMS/PIC data is incorrect for:

- (i) The aggregate of occupied dwelling unit months (Section 2, Column A, Line 01 of the HUD-52723) and Lines 02 and 05–12 (excluding Line 11), Section 2, Column A, of the HUD-52723 where there is an increase of 3% or more from the pre-populated number; or
- (ii) Vacant units (Section 2, Column A, Line 11 of the HUD-52723) where there is a decrease of 3% or more from the pre-populated number.

To show that the pre-populated IMS/PIC data is incorrect, the PHA must demonstrate the following:

- (i) Cause of the data discrepancy was beyond the control of the PHA, and
- (ii) The PHA made timely efforts to resolve the discrepancy—a Technical Assistance Center (TAC) ticket number is required to demonstrate timely effort.

FOs may request any additional documentation that they consider necessary.

## **5. Submission of New Project Excel Tools and Request for Revision to the CY 2018 Operating Subsidy Eligibility**

- (i) Submission of New Project Excel Tools

For new projects, only lines 3 and 4, Section 2 of the HUD-52723, will be populated. After new project Excel Tools for the CY 2018 Operating Subsidy Processing are posted online, PHAs will have five business days (but not later than July 14, 2018) to submit the new project Excel Tools to their respective FOs. In the absence of such submissions, the new projects will not be considered for funding under the CY 2018 Operating Subsidy.

- (ii) Request for Revision

The submission of a revised Tool by a PHA to its FO constitutes a request for a revision. In making such a submission, the PHA **MUST** provide an explanation of the change(s) being requested, and the reason for the change(s). Prior to making its revision request, the PHA should initiate contact with the FO well in advance so that they can resolve any issues prior to the revisions deadline. PHAs may request revisions to their original CY 2018 operating subsidy submissions based on any of the four reasons listed below.

- (a) Correction of mathematical, clerical, information system or other errors;
- (b) Approval of demolition or disposition of units (24 CFR 990.155);
- (c) New utilities incentives/contracts approved pursuant to 24 CFR 990.185, but not including Rate Reduction Incentives under 24 CFR 990.185 (b); or
- (d) Appeals submitted in accordance with this notice and approved by HUD (pursuant to 24 CFR 990.245).

All revision requests **MUST** be submitted to the appropriate FO **no later than August 1, 2018**, to allow sufficient time for FO review and for the inclusion of any resulting changes to eligibility in the final calculations of operating subsidy prior to the end of FFY 2018. **Requests for revisions shall NOT be accepted after August 1, 2018, unless they lower subsidy eligibility.**

## **6. Other Operating Subsidy Calculation Information and Add-Ons**

### **A. Project Expense Level (PEL)**

The PEL is the model-generated estimate of the cost to operate 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 webpage 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)

*Note that changes, which become effective after HUD pulls IMS/PIC project, building and unit characteristics for the calculation of PELs for CY 2018, and finalizes the 2018 Validated Inventory, will apply to CY 2019 operating subsidy calculations.*

### **B. Formula Income**

Formula income is an estimate of a PHA's rental revenue. The CY 2018 per unit month (PUM) formula income will be pre-populated based on the PHA's approved FY 2016 FASS-PH Financial Data Schedule (FDS) submission. 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 2018 formula income inflation factor. (It is important to note that formula income **MUST** tie back to the FDS and **MUST** be inflated.) Guidance on the formula income methodology, including information on how the formula income inflation factor is derived, is posted on the CY 2018 Subsidy Processing webpage.

### **C. Cost of Independent Audit**

A PHA is eligible to receive operating subsidy equal to its most recent actual audit costs for the Operating Fund Program when an audit is 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. All audits for which PHAs receive operating subsidy must be submitted electronically to HUD in accordance with HUD's Uniform Financial Reporting Standards rule (24 CFR part 5 Subpart H). A PHA whose operating subsidy eligibility is determined to be zero based on the formula is still eligible to receive operating subsidy equal to its most recent actual audit costs [as stipulated at 24 CFR 990.190(d)].

Project audit costs will be pre-populated in the HUD-52723. The pre-populated costs reflect the PHA's approved CY 2016 FASS-PH FDS submissions. If a project's most recent actual audit cost differs from the amount pre-populated, the PHA may enter the project's most recent actual audit cost and attach proof of payment when submitting the CY 2018 HUD-52723.

For mixed finance projects with both ACC and non-ACC units, the audit costs will need to be prorated to determine the amount allocable to ACC Public Housing units. The amount

allocable to the Operating Subsidy should be based on the ratio of ACC units divided by total units.

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

#### **D. Payments in Lieu of Taxes (PILOT)**

Project PILOT amounts will be calculated and then pre-populated in the HUD-52723 based upon approved CY 2016 FASS-PH FDS data. If a project's most recent actual PILOT amount is greater than the amount pre-populated, the PHA may enter the higher amount and attach proof of payment to the CY 2018 submissions.

Regulatory requirement at 24 CFR 990.190(c) stipulates 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 that PILOT shall be 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 the HUD-52723 by calculating 10 percent of shelter rents. If one of the lesser amounts identified in (i), (ii) or (iii) above apply, the PHA must override the pre-populated amount with the lesser amount.

For mixed finance projects the PILOT may not be prepopulated, in which case the FO should request a copy of the owner entity's Audited Financial Statement to confirm the PILOT amount. For mixed finance projects with both ACC and non-ACC units, the PILOT costs may need to be prorated to determine the amount allocable to public housing units. This would only be the case where both non-ACC and ACC units are subject to PILOT. Public housing units that pay real estate taxes are therefore not subject to PILOT, and therefore may not include PILOT in its subsidy calculation.

#### **E. Asset Management Fee**

- i. PHAs with 250 or more public housing units under ACC (400 or more units under the asset management exemption appropriations provision) 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, PIH-2006-35 (HA) and regulations at 24 CFR 990.230(d).
- ii. Asset management fees for PHAs that comply with related regulatory requirements are determined as follows: (1) PHAs with at least 250 units are eligible for a \$4 PUM asset management fee; and (2) PHAs with fewer than 250 units that elect to transition to asset management are eligible for a \$2 PUM asset management fee. PHAs with only one project, regardless of the number of units, are not eligible for an asset management fee pursuant to 24 CFR 990.190(f).

## **F. Information Technology Fee**

In accordance with 24 CFR 990.190(g), each PHA's operating subsidy calculation shall include \$2 PUM for costs attributable to information technology. For all PHAs, this fee will be based on the total number of ACC units.

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

- i. PHAs must follow regulatory requirements at 24 CFR 990.190(h). PHAs must ensure that PIC data is accurate and use it to calculate their ARF eligibility. Critical data elements include the HUD demo/dispo/homeownership approval date and the date of removal from inventory. Additional elements for non-homeownership cases include the days to relocation in the Demo/Dispo module and the End of Participation (EOP) of the first move out after the relocation date. PHAs should work with their FO to make any needed corrections. Modifications to the Demo/Dispo module may only be done in conformance with guidance in Notice PIH-2017-22.
- ii. Section 3, Line 14 of the HUD-52723 will be prepopulated with ARF eligibility calculated based on PIC data. However, PHAs must confirm the accuracy of this data element and revise as needed, in conformance with guidance in Notice PIH-2017-22
- iii. When a unit is eligible for ARF, PHAs must remove any unit months used to calculate ARF from Section 2 of the HUD-52723, except Column A, Line 12 as noted below. After ARF eligibility ends, if the units have not yet been removed from the ACC, they must be reported in Column A, Line 13. The ARF unit months reported on Lines 12 and/or 13 may be different than those used to calculate ARF eligibility as reflected in Section 3, Part A, Line 14. This is because unit months used to calculate ARF eligibility are not required to be on the ACC, and only ACC units are included in Section 2.
- iv. PHAs shall submit supporting documentation detailing the ARF calculation for the requested amount. Supporting documentation must include:
  - The project number and Demo/Dispo Application number;
  - A copy of the letter approving the demo/dispo application or homeownership plan (whichever is applicable) and any amendments thereto; and
  - A spreadsheet showing ARF eligibility calculation and related information, including:
    - The date of the approval letter;



- For non-homeownership cases, number of days to relocation after the approval letter is issued, and the resulting relocation date. For homeownership cases, the disposition date;
  - For non-homeownership cases, the first move out after the relocation date (must be consistent with the EOP in IMS/PIC), or a statement that all units were vacant on the date of the approval letter or the relocation 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.
- v. Requests that do not include the above items and any other items requested by the FO, may be deemed ineligible for the ARF by HUD. Pursuant to 24 CFR 990.155, PHAs shall periodically revise their HUD-52723 submissions to reflect changes in eligibility based on the removal of units. This should be done on a quarterly basis to capture changes in ARF eligibility.

#### **H. Utilities Expense Level (UEL) and Central Office Cost Center (COCC)**

The UEL is primarily derived by taking the utility rate and multiplying it by the payable consumption level, and then multiplying the result by the UEL inflation factor. The UEL 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 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) in Section 10 of HUD-52722.

The HUD-52722 is available on the CY 2018 Operating Subsidy Processing webpage. To access guidance for excluding COCC utility consumption and costs from combined consumption and costs in a pre-asset management Energy Performance Contract, click on the link below:

<https://www.hud.gov/sites/documents/epc-cocc.pdf>

If the entire project is ARF eligible (i.e., all units have been removed from the ACC), from the date of ARF eligibility, the project will not be eligible for the Utilities Expense Level (UEL), Formula Income, and Add-on (other than ARF) portions of the Operating Fund formula.

If a project is only partially ARF eligible, the units that are not ARF eligible will remain eligible for the non-ARF portions of the Operating Subsidy formula. However, once less than a full twelve months of consumption is included in Line 1 of the HUD-52722, the consumption for the removed buildings must be removed from the rolling base in the HUD-52722. To access

guidance on how to adjust the rolling base when units are removed from inventory, click on the link below.

[https://www.hud.gov/sites/documents/rba\\_guidance.pdf](https://www.hud.gov/sites/documents/rba_guidance.pdf)

The UEL on Line 26 of the HUD-52722 must be used to populate Section 3, Part A, Line 5 of the HUD-52723. Also, Section 2 Column B, Lines 04, 15, and 17 of the HUD-52723 must be used to calculate Line 25 of the HUD-52722. Funding may be suspended for projects where the two forms are not consistent with each other.

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

For CY 2018, the public housing share of the reasonable cost of salary, fringe benefits and administrative costs for the EDSC Program is eligible for operating subsidies. Only PHAs previously receiving EDSC funding are eligible. Eligibility may be confirmed on the Calendar Year 2017 Operating Subsidy Processing web page.

Total EDSC eligibility may only increase annually up to the amount of the annual inflation factor in the HUD-52723, Section 3, Part A, Line 02. Eligible PHAs may enter the eligibility amount for the EDSC program in the HUD-52723, Section 3, Part A, Line 07. This "Self-sufficiency" line is restricted to the EDSC program and does not include ROSS funding.

### **J. Family Self-Sufficiency (FSS) Program**

The FSS program enables families assisted through the Housing Choice Voucher (HCV) and Public Housing (PH) 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 of participation and are provided opportunities for education, job training counseling and other forms of social service assistance so that they can develop the necessary skills required to achieve self-sufficiency. Also, escrow accounts are established for participants by the PHA. As a participant's skills increase, earnings will likely increase, resulting in an increase in the participant's rent. In such cases, the PHA places the increase in rent into the escrow account. Provision of operating subsidy to the PHA for its FSS escrow payments is through an adjustment to formula income in the calculation of Operating Subsidy in the HUD-52723. PHAs are to reduce their tenant rent portion of formula income (on the HUD-52723) by the amount of their FSS escrow payments. PHAs must enter appropriate comments in the comment Section of HUD-52723 when FSS escrow adjustments are made.

### **K. Energy Loan Amortization for Energy Performance Contracts**

With written HUD approval of an approved Energy Performance Contract, a PHA may qualify for certain incentives under the Operating Fund Formula as described in 24 CFR 990.185.

## **L. Funding for Resident Participation Activities**

As stipulated in 24 CFR 990.190(e), each PHA's operating subsidy calculation shall include \$25 per occupied unit per year for resident participation activities, including but not limited to those described in 24 CFR 964. A unit is eligible to receive resident participation funding if it is occupied by a public housing resident or it is occupied by a non-assisted PHA employee, or a 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 will be adjusted accordingly.

## **M. Environmental Requirements**

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

## **N. Moving To Work (MTW) PHAs**

- (a) MTW PHAs with an alternative Operating Fund formula agreement shall submit Operating Subsidy forms in accordance with their MTW Agreements. In cases where this involves submitting one form on a PHA-level basis, PHAs shall follow these instructions:
- (1) HUD-52723: Enter data in accordance with the MTW agreement, which generally would include entries for Sections 1; Section 3, Part C, Lines 01 and 04; and Part D, Lines 01 and 03.
  - (2) HUD-52722 is not submitted.
  - (3) Provide documentation supporting the agreement's formula, which may include forms and unit months referenced in Attachment A of the MTW Agreement). The supporting documentation may be submitted as an attachment to the HUD-52723.
- (b) MTW PHAs not submitting 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 the HUD-52723 and the HUD-52722 on a project-level basis in the same manner as regular formula PHAs.

## **7. Appeals**

### **A. Types of Appeals**

24 CFR 990.245 establishes four types of appeals:

- i. Streamlined appeal: This appeal requires the PHA to demonstrate a blatant and objective flaw in the application of a specific Operating Fund formula component.

For example, a geographic coefficient is identified with Springfield, IL, when it should be Springfield, MA.

- ii. Appeal for specific local conditions: This appeal requires the PHA to demonstrate that the model-generated PELs fail to reflect specific local conditions. To be eligible, the affected PHA must demonstrate, using an independent cost assessment, that the model-generated PEL is not accurate for comparable properties in the PHA's market area, with a variance of ten percent (10%) or greater.
- iii. Appeal for changing market conditions: A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions after the PHA has taken aggressive marketing and outreach measures to rent these units. The vacancies cannot be the result of action or inaction by PHA management. For example, a PHA located in an area suffering economic dislocations may experience extreme population loss leading to a shortage of applicants, even with aggressive marketing and outreach.
- iv. Appeal to substitute actual project cost data: A PHA may appeal PELs based on actual project cost data under an asset management period of at least two years as outlined in 24 CFR Part 990, Subpart H – Asset Management. For this type of appeal, the PHA must also submit an independent cost assessment.

Notwithstanding the foregoing, nothing in this notice is meant to prevent a PHA from corresponding with the Director of the Office of Public Housing, Director of Financial Management Division, their respective FO Director, or other PIH staff, if appropriate, regarding any issues or concerns regarding notice implementation and operating subsidy eligibility.

*Note that the appeal of formula income for economic hardship is no longer applicable since the frozen formula income provisions of 24 CFR 990.195 expired at the end of 2009.*

## **B. Appeal Requirements**

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 greater 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, and any appeals that address single projects and not the entire portfolio will be denied.

For "specific local conditions" appeals and "substitute actual project cost data" appeals, the PHA is to acquire, at its own expense, an independent cost assessment comparing costs for comparable affordable housing properties to the costs for each public housing project for the PHA, and its public housing portfolio in total, taking into account its Operating Subsidy formula eligibility. The person performing the assessment must have appropriate knowledge of multifamily operating costs within the local market. The independent cost assessment should include:

- i. **Comparable Data:** Cited data must be verifiable by HUD with complete source identification. Itemized comparative data must include: locality, occupancy type, building type, expenses, and PELs. (Refer to Public and Indian Housing *PIC Development Submodule User Manual*, pages 4-7, for definitions of building types).
- ii. **Adjustments:** Assessments must fully disclose any adjustments made to the comparative data, including the nature of the adjustment, the reason for the adjustment, the adjustment method and citation of source documents.
- iii. **Reporting:** Assessments must present the entire PHA’s portfolio in a table format and include the following for each individual project:
  - 1) Number of units
  - 2) Occupancy type
  - 3) Building type
  - 4) Current PEL
  - 5) Appellant’s suggested PEL
- iv. For “actual project cost data” appeals the PHA must also submit actual project cost data derived from actual asset management as outlined in regulations at 24 CFR subpart H for a period of at least two years.
- v. For “streamlined” appeals, the PHA must describe the flaw and submit supporting documentation. For “local conditions” and “actual project cost data” appeals, the PHA must include the independent cost assessment with its submission. “Streamlined,” “local conditions,” and “actual project cost data” appeals must be sent by email to [William.G.Jones@hud.gov](mailto:William.G.Jones@hud.gov) and [Kevin.J.Gallagher@hud.gov](mailto:Kevin.J.Gallagher@hud.gov) with the subject line “Appeal under 24 CFR 990.245.” Appeals must be sent within 60 days of the PHA’s initial submission of the CY 2018 HUD-52722 and HUD-52723 to the appropriate FO. The PHA also must provide a copy of the appeal to the Public Housing Director of the FO, and the appropriate Financial Analyst at the FO.

### **C. Appeal Processing Requirements for CY 2018**

PHA appeals for “changing market conditions” are to be submitted to the appropriate FO along with the PHA’s original operating subsidy submission for CY 2018.

Final appeal decisions will be issued prior to the revisions deadline. If an appeal is granted, HUD will adjust the PHA's subsidy by the appropriate amount, which will be retroactive to the beginning of the year. The PHA must then submit the revised HUD-52722 and HUD-52723 to the Field Office by the revisions deadline.

## **9. Rental Assistance Demonstration (RAD)**

### **(a) Funding**

For units that convert through RAD for the remainder of the first Calendar Year (i.e., the 'Initial Year') in which a Housing Assistance Payment (HAP) contract is effective, Operating Funds will be obligated to the PHA for the Covered Project based on the Operating Subsidy eligibility calculated as it normally is, without regard to the converted units.<sup>[1]</sup> PHAs must submit HUD-52722 and HUD-52722 and follow the normal Operating Subsidy process (including revisions where corrections are needed) for the project for the Calendar Year in which the HAP contract becomes effective<sup>2</sup>. The amount of Operating Funds that can be used for HAP payments during the Initial Year is capped at HUD's obligations of Operating Subsidy to the project for the remainder of the year of conversion, pro-rated by the portion of units in the development that are converting and will be removed from PIC. In the year after the HAP effective date<sup>2</sup>, the converted units shall not receive any further Operating Subsidy.

Projects/units with effective dates in 2017 or before are ineligible for 2018 Operating Funds. The following applies to these projects/units:

- When a unit is approved but not removed via Section 18 and subsequently converts through RAD, the unit will be identified as approved for removal via Section 18 until it converts through RAD. Once it converts through RAD, it must be transferred to the RAD application in PIC immediately after the conversion occurs.
- If the project fully converted through RAD, the project is not eligible for 2018 Operating Subsidy.
- For fully converted projects, if the conversion happened early in 2017, HUD will not deploy an Excel Tool for 2018 for the project. However, if the conversion happened late in 2017, HUD may deploy an Excel Tool and/or mistakenly fund the project. If an Excel Tool is deployed for a project for 2018, but that project fully converted in 2017, the PHA should not submit the Excel Tool. If the project is funded in 2018, the PHA should not draw down funds and should notify their FO that the project should not be funded.
- For partially converted projects, the PHA and FO must ensure that no eligible unit months (EUMs) for units that converted through RAD are included in the Excel Tools. For projects that close early in the year prior to the funding year, HUD will

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<sup>1</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 public housing Operating Subsidy for the Converted Project for the balance of the Calendar Year.

<sup>2</sup> HAP effective date is the day on which HAP payments begin.

remove EUMs from the RAD units from Section 2 of the HUD-52723. However, in all instances, the FO and PHA must ensure that the EUMs are removed.

- For partial conversions, the rolling base should be adjusted. Please see the instructions to the HUD-52722 (available on the 2018 Operation Subsidy Processing webpage, and via HUDCLIPS) for details on adjusting the rolling base.

### **(b) Designation of Units Converting to 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 they comply 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). To receive such designation, the units must be approved by the FO, and the unit status correctly reflected in PIC. Furthermore, the RAD conversion and planned modernization must be in: (i) a HUD approved PHA Annual Plan for non-qualified PHAs (24 CFR 903); (ii) a HUD approved 5-Year Plan for qualified PHAs (24 CFR Part 903) (if no Capital Funds are being used as part of the modernization, a narrative description of the work, including the projected start and completion date, should be included in the capital improvements section of the Plan); or (iii) a HUD approved Capital Fund Plan (24 CFR 905.300) if Capital Funds are being used for modernization. Vacant units converting through RAD that will not be modernized are not eligible to be categorized as units undergoing modernization.

## **10. Turnkey III Projects**

HUD-53087 requests are accepted only for projects transitioning out of the Turnkey III Program, and where supporting documentation has been provided including ACC and active lease purchase agreements. A PHA needs to provide the status of the properties with respect to 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 Fund program funding as Turnkey III units. Once the units are transitioned to regular public housing units, the PHA should insure that these units’ PIC program type is changed to “Low Rent.”

## **11. The Faircloth Limit**

Section 9(g)(3) of the 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 or Operating Funds 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 ACC units, consolidations, and RAD removals. PHAs will not be funded for those units that exceed the posted Faircloth limit, and are responsible for reviewing the Faircloth limits and notifying HUD if they believe their posted Faircloth Limit is in error.

The Faircloth Limit is maintained by PIH’s Office of Capital Improvements in Notice PIH-2011-69. Additional information on how the Office of Capital Improvements 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 Fund is calculated on an Eligible Unit Month 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 webpage. Where the sum of unit months (HUD-52723 Section 2, Column A, Line 15 minus Line 4) for all of a PHA’s projects exceeds the Faircloth Unit Month Limit, the excess units must be removed from the PHA’s Operating Subsidy Forms.

In the absence of a 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, HUD-52723, beginning with the newest project added to inventory. If the total number of unit months in the newest 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 a PIC ticket exists that will correct the Faircloth violation, the unit status in the HUD-52723 should be updated to align with the PIC ticket. Likewise, if PIC has already been updated, the unit status in the HUD-52723 should be updated to align with the updated PIC data.

*It is important to note that appropriate adjustments need to be made to the HUD-52722 whenever units are being reduced from the HUD-52723. At a minimum, the EUMs on the HUD-52722 will need to be updated accordingly.*

## **12. PHA Board Resolution**

The PHA Board Resolution (the HUD-52574) approving the PHA’s operating budget must be submitted to the appropriate FO prior to the beginning of the PHA’s fiscal year. 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).”



### **13. HUD Approval of Calculations**

An explanation of the funding methodology and the obligation letters for each set of interim months funded will be posted on the CY 2018 Operating Subsidy Processing webpage. Based on the FFY 2018 Appropriations Act, PHA operating subsidy eligibility submissions, and FO reviews, HUD will determine and approve final operating subsidy levels for CY 2018. Final subsidy levels for PHAs will be posted on the same webpage.

### **14. Penalty for False Claims and Statements**

HUD will prosecute false claims and statements. Such false statements and/or entries may be subject to criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

### **15. 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 Fund 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) Supercircular—2 CFR 200.333(b)—allows Federal agencies (hence HUD) to extend the record-retention period for non-Federal entities, provided that 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.

### **16. Further Information**

All questions from PHAs are to be referred to the appropriate FO.

### **17. 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.

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Dominique Blom  
General Deputy Assistant Secretary  
Public and Indian Housing