



Special Attention of:

Public Housing Agencies;
Office Directors of Public Housing;
Regional Directors

Notice PIH 2020-30

Issued: October 23, 2020

This notice remains in effect until amended, superseded or rescinded.

Cross Reference: 2 CFR Part 200, 24 CFR Part 905 Subpart E, 24 CFR Part 965 Subpart D, 24 CFR Part 990, Notice PIH-2011-30 (HA), Notice PIH-2011-36 (HA), and Notice PIH 2018-20, HUD Handbook 7460.8 REV 2 (2/2007), Utilities chapter of the Public Housing Occupancy Guidebook, Notice PIH 2020-03

SUBJECT: Implementation of Section 209 (b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act)

(1) Purpose

This notice provides guidance¹ to Public Housing Agencies (PHAs) on the implementation of Section 209 (b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act), Public Law No: 115-174. Specifically, this notice provides guidance on the use and eligibility requirements for the Small Rural Frozen Rolling Base (SR-FRB) program.

(2) Applicability

This notice applies to eligible PHAs that operate a public housing program and provides guidance under the Public Housing Operating Fund Grant Program pursuant to the Department of Housing and Urban Development (HUD) regulations at 24 Code of Federal Regulation (CFR) Part 990.

¹ The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

PHAs must meet the definition of both small and rural at the time they enter the SR-FRB program, as defined by the Economic Growth Act. Pursuant to the Federal Register Notice, Economic Growth, Regulatory Relief, and Consumer Protection Act: Initial Guidance on Property Inspections and Environmental Review, 85 FR 11381 (February 27, 2020), HUD defines small rural PHAs as those that meet the following criteria:

- administers 550 or fewer combined public housing units and vouchers under section 8(o); and
- has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or has more than 50 percent of its combined public housing units and voucher units (Housing Choice Voucher and Project Based Voucher) under section 8(o) located in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). 85 FR 11382

The list of eligible PHAs is available at:

https://www.hud.gov/program_offices/public_indian_housing/pha/lists²

Alternative Operating Subsidy (AOS) Moving to Work (MTW) agencies whose MTW Agreements modify the Utility Expense Level (UEL) are not eligible to participate in the SR-FRB program unless they amend their MTW agreement to adopt the Operating Fund Formula found at 24 CFR Part 990. To the extent that an AOS MTW PHA's MTW Agreement does not modify the UEL component of the Operating Fund Formula, the PHA would be subject to the same eligibility criteria as described in this notice.

A PHA project is not eligible to receive both an Energy Performance Contract (EPC) incentive and a SR-FRB incentive, at the same project, in the same year. Therefore, if a PHA is currently participating in an EPC on a project and then chooses to participate in the SR-FRB program on the same project, the PHA must exit the EPC program and use actual consumption data, not EPC baselines, to establish their SR-FRB.

(3) Background

Operating Fund eligibility is calculated by project pursuant to a formula, the major elements of which include Project Expense Level (PEL), UEL, Formula Income (FI), and add-on expenses. Operating Fund grants received by each project can be used for any eligible Operating Fund expense. For further information on the Operating Fund, see Section 9(e) of the U.S. Housing Act of 1937, 24 CFR Part 990, and the most recent Operating Fund Grant Processing Notice.

The Economic Growth Act allows eligible PHAs to freeze their three-year rolling base consumption level (RBCL) that is used to calculate Operating Fund grants. PHAs will be able to freeze consumption using the average annual consumption for the most recent three-year period for a period of up to 20 years. This three-year period is defined as the SR-FRB and may be subject to adjustments as specified in this notice. All cost savings accrue to the PHA and may be used for any eligible public housing purpose at the PHA's discretion.

² PHAs may appeal non-designation following the procedures in 85 Fed. Reg. 11381, 11383 (February 27, 2020).

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(4) Program Participation

The SR-FRB program applies only to PHA-paid utilities included in the UEL³ as reported in Form HUD-52722. Utilities included in the UEL are electricity, gas, heating fuel, water, and sewerage services.⁴ Utilities billed on a flat rate, rather than actual consumption, are not eligible for participation in the SR-FRB program as consumption is not a factor in calculating the UEL. Trash removal services are not eligible for participation in the SR-FRB program as they are included as a component of the PEL. Resident paid utilities are not eligible for the SR-FRB program as utility allowances are included in FI and are reported in Form HUD-52723.

4.1 Eligibility

Eligible PHAs must meet the definition of a small rural PHA, as described in Section 2 of this notice, at the time of initial notification to HUD of the intent to participate in the SR-FRB program. As described in Section 2 above, HUD has published a list of eligible small rural PHAs on its website. PHAs included on this list are eligible to elect to participate in the SR-FRB program.

4.2 Notification to HUD

PHAs that choose to participate in the SR-FRB program must notify HUD no later than the SR-FRB Notification Date, July 1 proceeding the upcoming funding period, for which the change would be applicable.

For example, the SR-FRB Notification Date for the 2022 funding period (January 2022 – December 2022) must be received by HUD no later than July 1, 2021.

For funding year 2021, the time frame and process for PHAs to submit to HUD the notification to participate will be identified in the calendar year 2021 Operating Fund Grant Processing Notice. In future years, PHAs must follow the SR-FRB Notification Date specified above. The SR-FRB Notification Date is also the deadline for notifying HUD of any changes to program participation including, but not limited to, entering the program, adding a utility, exiting the program, or any other adjustments identified in this document.

For each utility included, the PHA needs to identify whether or not the utility is the primary source of heat at the project and if the PHA will make an adjustment to the historical

³ UEL is a product of the utility rate multiplied by the payable consumption level multiplied by the utilities inflation factor expressed as a per unit month (PUM) dollar amount (24 CFR § 990.110).

⁴ 24 CFR § 990.115

consumption for Heating Degree Days (HDD). If the PHA will make an adjustment for HDD, then the PHA must submit the adjustment and the supporting documentation as specified in Section 4.6. In future years, if the PHA wants to include other utilities in the SR-FRB program, the PHA needs to include the requested information no later than the applicable SR-FRB notification date proceeding the impacted funding year.

If a PHA is electing to participate or make changes to their participation, the PHA should notify HUD at PIH_Energy@hud.gov.

4.3 Entering and Leaving the SR-FRB Program

Participating PHAs must identify both the project and the utilities to freeze. PHAs have the flexibility to participate with one or more projects in their portfolio and may elect to freeze one or more eligible utilities within each project. PHAs that elect to participate in the SR-FRB program must participate for an entire funding year (January through December) and must freeze all consumption for the selected utilities within the project. PHAs have the option to add additional utilities in future funding years within the 20-year term. Each project within a PHA's portfolio will have a 20-year term based on the first year that the first utility is frozen.

During the 20-year term, a PHA may decide to remove one or more of its projects from the SR-FRB program. When a project is removed from the SR-FRB program, all utilities within the project return to using actual consumption amounts in Form HUD-52722 for subsequent funding years. PHAs that choose to remove a project from the SR-FRB program may choose to have that project re-enter the SR-FRB program after a four-year waiting period. If the PHA chooses to re-enter the project into the SR-FRB program, then the project is eligible to participate in the SR-FRB program for up to 20 years. See Appendix I for more information.

4.4 Establishing the Baseline

The SR-FRB time period is the same time frame as the RBCL, which is the average of yearly consumption levels for the 36-month period ending on June 30 which is 18 months prior to the first day of the first funding period.

For example: If a PHA elects to participate in the SR-FRB program for Funding Year 2021 (January 1, 2021 – December 31, 2021), then the SR-FRB would be based on the utility data from July 1, 2016 – June 30, 2019. If the PHA does not participate in the SR-FRB program, this time period would align with the time period included in the RBCL for Funding Year 2021.

Table 4.4-1: The table below illustrates the time periods used to calculate the SR-FRB. The line numbers highlighted below align with Form HUD-52722. The 'Average Rolling Base Consumption' identified below is the amount that the SR-FRB will use for calculating Operating Fund grant eligibility. During the SR-FRB period, the PHA should continue to enter actual consumption in Line 1 even though this value will not impact either the SR-FRB or Operating Fund grant eligibility when the PHA is participating in the SR-FRB program.

	2020 Funding Year		2021 Funding Year		2022 Funding Year		
	Dates		Dates		Dates		
Funding Year	1/1/20 - 12/31/20	No SR-FRB	1/1/21 - 12/31/21	SR-FRB	1/1/22 - 12/31/22	SR-FRB	
Utility	Water		Water		Water		
Unit of Measure	Gallons		Gallons		Gallons		
Actual Consumption (Line 1)	7/1/18 - 6/30/19	100	7/1/19 - 6/30/20	75	7/1/20 - 6/30/21	90	
Rolling Base Year 1 (Line 2)	7/1/17 - 6/30/18	125	7/1/18 - 6/30/19	100	7/1/18 - 6/30/19	100	Small Rural Frozen Rolling Base
Rolling Base Year 2 (Line 3)	7/1/16 - 6/30/17	150	7/1/17 - 6/30/18	125	7/1/17 - 6/30/18	125	
Rolling Base Year 3 (Line 4)	7/1/15 - 6/30/16	175	7/1/16 - 6/30/17	150	7/1/16 - 6/30/17	150	
Average Rolling Base Consumption (Line 6)	7/1/15 - 6/30/18	150	7/1/16 - 6/30/19	125	7/1/16 - 6/30/19	125	

If the PHA adjusted the consumption value reported in the RBCL according to HUD’s *Guidance on How to Adjust the Rolling Base When Projects, Buildings or Units Are Removed from Inventory*⁵, then the PHA shall use this adjusted value for the SR-FRB. If the most recent consumption value would normally be adjusted before being used in the RBCL, then the PHA must make this adjustment according to the previously mentioned guidance.

4.5 Multiple Utility Providers or Bills for a Single Utility

PHAs must freeze all consumption for the whole utility for the whole project. If the PHA has more than one bill and/or more than one provider for the same utility, then the PHA must combine all of the utility consumption on the Form HUD-52722. The PHA must use the same time frame for all accounts in that utility. PHAs are responsible for combining the utilities and ensuring that all data is reported in the correct unit of measurement.

PHAs freezing a utility that has two or more utility bills where at least one utility bill calculates the cost based on a fixed consumption or without regard to actual consumption, may only freeze the utility bill(s) that are based on actual consumption. Utility bills calculated based on a fixed consumption or without regard to actual consumption must be reported as “Flat Rate” in Form HUD-52722 and are not eligible to be included in the SR-FRB program.

Example 4.5-1: The Apple Housing Authority receives two bills from their electric company. One bill is for the common area consumption and the other bill is for the streetlights in the parking lot and is billed on a flat cost per day. The Apple Housing Authority should report the common area consumption in the ‘Electricity’ data field in Form HUD-52722. This bill is eligible to be included in the SR-FRB program. The Apple Housing Authority should report the streetlight bill as a “Flat Rate” in Form HUD-52722. This second bill is not eligible to be included in the SR-FRB program.

⁵ https://www.hud.gov/sites/documents/RBA_GUIDANCE.PDF

Example 4.5-2: The Apple Housing Authority receives a separate bill for water consumption and sewerage services. Water is billed based on actual consumption, whereas sewerage services are billed on a flat monthly rate. In Form HUD-52722, the Apple Housing Authority should report the bill for actual consumption in the ‘Sewerage and Water’ data field and the bill for sewerage services separately. In this scenario, the Apple Housing Authority is only eligible to include the water consumption in the SR-FRB program.

PHAs should refer to the latest Operating Fund Grant Processing Notice for more guidance on how to complete the Form HUD-52722.

4.6 Heating Degree Days (HDD)

PHAs are eligible to request a one-time adjustment, at the point of enrollment no later than the SR-FRB Notification Date, to their SR-FRB to account for weather variations otherwise known as adjustments for HDD. HDD adjustments shall only be applied to the utility that provides heat to the building(s) and shall only impact the heating load portion of that utility. PHAs that choose to exercise this option, shall enlist a licensed engineer or architect to calculate a one-time adjustment to account for weather variations. The adjustment should be made by comparing the HDD for the time period of the RBCL against the most recent 20-year period for their local area. The adjustment must be submitted to HUD no later than the SR-FRB Notification Date for the enrollment year. HUD will not accept HDD adjustment calculations unless the adjustments are certified by a licensed engineer or architect. HUD reserves the right to review the adjustments and request additional supporting documentation.

4.7 Removing Units from Inventory

If a PHA participating in the SR-FRB program removes public housing units from inventory that are included in the SR-FRB program, then the PHA must follow HUD’s *Guidance on How to Adjust the Rolling Base When Projects, Buildings or Units Are Removed from Inventory*⁶ to determine if and how to adjust the SR-FRB to account for unit removals. Specifically, a PHA must make an adjustment if they remove an entire building or at least 10% of the units within a project participating in the SR-FRB program. PHAs that are required to make an adjustment must notify HUD of the change and submit a proposed adjustment to their SR-FRB no later than the SR-FRB Notification Date immediately following the change. Adjustments shall be subject to the review and approval of HUD. Failure to do so will result in removal from the SR-FRB program and HUD may pursue a recapture of overpayment of Operating Funds.

4.8 Change in Resident Responsibility

If there was a change in resident responsibility for one or more utilities included in the SR-FRB, then the PHA must notify HUD no later than the SR-FRB Notification Date. PHAs that convert a building from PHA-furnished utilities to resident-purchased utilities must adjust the SR-FRB to remove the utility consumption that is attributable to resident consumption and will be paid by

⁶ https://www.hud.gov/sites/documents/RBA_GUIDANCE.PDF

residents going forward. The adjustment must be made no later than when the individual utility bills are transferred to resident-paid⁷.

When switching from PHA-paid to resident-paid utilities, PHAs will make an adjustment to their FI through the inclusion of a utility allowance. In such circumstances, PHAs will need to make a manual adjustment to the FI in their Form HUD-52723 until the utility allowance change is incorporated in the FI.

Properties with resident-purchased utilities that convert to PHA-furnished utilities must implement a submetering program with utility surcharges for actual utility consumption as required by per Subpart E (§ 965.501 - § 965.508). PHAs that implement a submetering program as a cost-effective alternative to resident-purchased utilities are eligible to adjust their SR-FRB for the additional consumption, provided that the PHA meets the requirements specified in 24 CFR 965 Subpart D (§ 965.401 - § 965.407) and Subpart E (§ 965.501 - § 965.508). PHAs will need to make a manual adjustment to the FI in their Form HUD-52723 until the utility allowance change is removed from the FI.

For more information on utilities, PHAs should refer to the Utilities chapter of the Public Housing Occupancy Guidebook.⁸

4.9 Change in Heating Fuel Source

When there is a change in the heating fuel used at a property included in the SR-FRB, then the PHA must adjust the impacted utilities included in the SR-FRB. The PHA should do this by removing the heating load portion of the SR-FRB and adding the equivalent consumption amount to the baseline for the new heating fuel. This section applies to changes in heating fuel source for both a building's heating and domestic hot water load. All adjustment amounts shall be calculated and certified by a licensed engineer or architect. PHAs must notify HUD no later than the SR-FRB Notification Date immediately following the change.

PHAs should review the scenarios below to determine if an adjustment needs to be made to the SR-FRB as a result of a heating fuel change.

Scenario 1: Neither the existing heating fuel nor the new heating fuel are included in the SR-FRB. The PHA does not need to make any adjustments to the SR-FRB.

Scenario 2: Both the existing heating fuel and the new heating fuels are included in the SR-FRB. The PHA needs to remove the heating portion of the SR-FRB from the existing heating fuel and add the equivalent consumption to the future heating fuel.

Scenario 3: The existing heating fuel is included in the SR-FRB, but the new heating fuel is not included in the SR-FRB. The PHA needs to remove the heating portion of the frozen utility

⁷ See the requirements contained in 24 CFR 965 Subpart E: Resident Allowances for Utilities (§ 965.501 - § 965.508). PHAs must comply with the resident notification timelines and procedures contained in HUD regulations.

⁸ https://www.hud.gov/program_offices/public_indian_housing/programs/ph/mod/guidebook

included in the SR-FRB and convert the consumption to the new fuel source and add it to the non-frozen utility.

Scenario 4: The existing heating fuel is not included in the SR-FRB, but the new heating fuel is included in the SR-FRB. The PHA needs to remove the heating portion of the non-frozen utility and convert the consumption to the new fuel source and add it to the SR-FRB.

Table 4.9-1 Illustrates the scenarios above.

	Frozen Utilities	Baseline Heating Fuel	Heating Fuel Change	Adjustment
1	Electricity	Fuel Oil	Fuel Oil to Natural Gas	None needed because heat was not included in the frozen utility.
2	Electricity, Natural Gas	Electricity	Electricity to Natural Gas	PHA needs to remove the portion of the electric bill associated with the heating load and add the equivalent consumption to the natural gas SR-FRB.
3	Fuel Oil	Fuel Oil	Fuel Oil to Natural Gas	The PHA needs to remove the portion of the fuel oil bill associated with the heating load. The equivalent consumption should be added to the non-frozen natural gas. If 100% of the fuel oil consumption was associated with the heating load, then the PHA must remove fuel oil from the SR-FRB program. This is done without penalty to any other utilities included in the SR-FRB program.
4	Natural Gas	Fuel Oil	Fuel Oil to Natural Gas	The PHA needs to remove the portion of the fuel oil bill associated with the heating load and add the equivalent consumption to the natural gas SR-FRB.

4.10 Financial Oversight

As described in Section 3, PHAs have the ability to use savings from the SR-FRB for any public housing purpose, including any eligible Capital Fund or Operating Fund expense. Savings are the amount of additional Operating Funds a PHA may receive in any given year as a result of participating in the SR-FRB program.

If a PHA uses savings for eligible Capital Fund expenses, it must maintain documentation to identify the savings amount, as well as the Capital Fund activities those funds were spent for. Such reporting must tie into the PHA’s financial reporting as required pursuant to 24 CFR Part 990. PHAs are reminded that any funds not expended by the account cancellation date must be returned to HUD.

(5) Debt Service

PHAs have the option to undertake financing for energy or water conservation improvements while participating in the SR-FRB program. If the financing transaction involves a security interest or other encumbrance in or on a public housing property, PHAs are required to obtain written approval from HUD of the security interest or encumbrance pursuant to Section 30 of the U.S. Housing Act of 1937. HUD's Section 30 review focuses narrowly upon the security interest or encumbrance and does not evaluate or approve the financing.⁹ PHAs that undertake any debt must provide HUD with appropriate documentation demonstrating that the Declaration of Trust (DOT) is effective and recorded in first position on the project and the DOT is superior to any new debt created.

PHAs have a choice to participate in either the SR-FRB program or the EPC program for any project. A PHA cannot participate or receive incentive payments for both programs for the same project for the same funding year. PHAs that pursue an EPC outside HUD's EPC program and/or do not receive HUD Energy Center approval prior to securing third party financing, are not eligible for EPC incentives identified in 24 CFR 990.185, Notice PIH-2011-36 (HA), Notice PIH 2018-20, or any updates thereto. A PHA may participate in the SR-FRB program while an EPC project is in development, but the PHA must exit the SR-FRB program entirely before the PHA is eligible to receive EPC incentives. PHAs that choose to participate in the SR-FRB program and then leave the SR-FRB program to participate in an EPC, must use actual utility consumption values, not the SR-FRB baseline, to establish their EPC baseline as described in the current EPC guidance above, or any updates thereto.

If a PHA pursues an energy conservation or capital investment project that is partially or completely funded by a utility company's on-bill financing program, the PHA must remove all associated financing costs when reporting the actual utility costs to HUD. Financing charges shall be paid out of an eligible funding source and not included in the UEL.

(6) Further Information

For additional information, questions, and comments regarding this notice, please direct emails to the mailbox at: PIH_Energy@hud.gov.

/s/

R. Hunter Kurtz, Assistant Secretary
for Public and Indian Housing

⁹ For more information, PHAs should refer to Notice PIH 2011-30: PHA Mortgaged Projects: Procedures for Section 30 Mortgage Transactions, or the most recent notice.

Appendix I: Sample Participation

In the example below, the PHA opted to participate in the SR-FRB program in Funding Year 2021 (January 1, 2021 – December 31, 2021). In the first year, the PHA opted to freeze electricity consumption. This was based on the consumption data from July 1, 2016 – June 30, 2019. In the second and third years, the PHA decided to freeze natural gas (SR-FRB: July 1, 2017 – June 30, 2020) and water (SR-FRB: July 1, 2018 – June 30, 2021) respectively. At the end of the third year, the PHA left the SR-FRB program.

The PHA was not eligible to participate in the program for four years due to the required waiting period. After this time, the PHA was able to re-enter the SR-FRB program in Funding Year 2028 (January 1, 2028 – December 31, 2028). In funding year 2028, the SR-FRB baseline utilized consumption data from July 1, 2023 – June 30, 2026. At this point of entry, the PHA is eligible for up to 20 years as there is not an adjustment for previous participation.

Year	Funding Year	Participation	Electric	HDD Adjustment	Natural Gas	HDD Adjustment	Water	HDD Adjustment
1	2021	Yes	Yes	N/A	No	-	No	-
2	2022	Yes	Yes		Yes	Yes	No	-
3	2023	Yes	Yes		Yes	Already applied in the previous year.	Yes	N/A
4	2024	No (Wait – 1)	Not Eligible					
5	2025	No (Wait – 2)						
6	2026	No (Wait – 3)						
7	2027	No Wait – 4)						
8	2028	Yes	Yes		No	-	Yes	N/A

Appendix II: Acronyms and Abbreviations

AOS	Alternative Operating Subsidy
CFR	Code of Federal Regulation
DOT	Declaration of Trust
EPC	Energy Performance Contracting
FI	Formula Income
HDD	Heating Degree Days
HUD	Department of Housing and Urban Development
MTW	Moving to Work
PEL	Project Expense Level
PHA	Public Housing Agency
PIH	Public and Indian Housing
PUM	Per Unit Month
RBCL	Rolling Base Consumption Level
SR-FRB	Small Rural Frozen Rolling Base
UEL	Utility Expense Level