



Special Attention of:
Public Housing Agencies
Public Housing Hub Directors

Public Housing Program Center
Directors
Regional and Field Office Directors

Resident Management Corporations

Notice PIH-2021-31

Issued: 24 November 2021

This notice remains in effect until amended, superseded, or rescinded

Cross References:

Notices: PIH-2020-30; PIH-2021-30, PIH-2020-05; PIH-2020-03; PIH-2018-19; PIH-2018-12; PIH-2017-22; PIH-2011-69; PIH-2011-65

Regulations: 24 CFR 905; 24 CFR 905.300; 24 CFR 903; 24 CFR 990; 24 CFR 970; 24 CFR 965; 24 CFR 964; 24 CFR 5.110; 2 CFR 200.333(b) 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: Public Law 115-174 Harvard Cost Study (2003)

SUBJECT: Public Housing Operating Subsidy Grant Eligibility Calculations and Processing for Calendar Year (CY) 2022

1. PURPOSE

This notice provides public housing agencies (PHAs) with instructions for calculating Operating Subsidy grants for CY 2022 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 2022, funding for the Operating Fund Program is anticipated to be allocated by Congress through the Further Consolidated Appropriations Act.

PHAs must electronically submit separate 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 *Excel Tools*.

3. COMMUNICATION

HUD disseminates information to PHAs using the following methods:

- **The CY 2022 Operating Fund Web Page** contains information related to CY 2022 Operating Subsidy grant processing. It can be accessed through the following link.
https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/opfnd2022
- **The Operating Fund Web Portal** welcome page provides PHAs with news and messages, and a calendar that highlights operating subsidy grant processing milestones. The *Operating Fund Web Portal* includes the PHA *Excel Tools* and guidance documents, and PHAs' current and historical operating subsidy grant data.
https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am/webportal
- **The Operating Subsidy Grant Listserv** is used to send out mass emails on important subjects using two lists of email addresses. These lists include one containing the email addresses of record in IMS-PIC, and one containing the email addresses that were used to sign up for the Operating Subsidy Grant Listserv. The Operating Subsidy Grant Listserv can be accessed using the following link:
https://www.hud.gov/program_offices/public_indian_housing/programs/ph/am

4. APPLICABILITY

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

Beginning with the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved 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 this exemption is removed from Fiscal Year (FY) 2022 Consolidated Appropriations, previously exempt PHAs will find required modifications to their submissions posted on the CY 2022 Financial Management Division (FMD) external web page.

5. CHANGES AND ADDITIONS TO THIS NOTICE

Compared to Notice PIH-2020-03, the following changes and additions are included in this notice.

- A table identifying the cancellation date for grant years that have not closed yet.
- The Department is no longer including the section on COVID-19 related issues.
- Added information on participating in the Small-Rural Frozen Rolling Base Program (SR-FRB).

6. HUD'S INITIAL AND CALENDAR YEAR (CY) OBLIGATIONS OF CY 2022 OPERATING SUBSIDY GRANT

At the beginning of the calendar year, HUD will be funding projects on an estimate; and later deploy *Excel Tools* for projects determined to be eligible. If HUD does not fund or does not generate *Excel Tools* for a project that the PHA considers eligible for operating subsidy, the PHA should contact its local HUD (PIH) Field Office. If HUD funds a project or generates *Excel Tools* for a project that is not eligible, the PHA must not draw down the funding or submit the *Excel Tools*. 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 *Excel Tools*. After the *Excel Tools* are processed, HUD funds projects based on the eligibility shown in those *Excel Tools*. As *Excel Tools* are updated throughout the year, HUD funds projects based upon the most recently processed *Excel Tools*. There is a lag in funding PHAs based on updated *Excel Tools* because of the time required to process the updated *Excel Tools* and obligate funds.

PHAs can identify the most recent *Excel Tools* processed by HUD in the *Operating Fund Web Portal*. 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). On a portfolio level, HUD's estimated funding is close to funding based upon actuals (i.e., funding based upon *Excel Tools* submitted by PHAs).

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. This includes a detailed calculation report for every obligation that can help a PHA understand fluctuations it may experience in funding amounts. If a PHA finds that the estimated eligibility exceeds the project's actual eligibility for CY 2022, 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 grant data in the *Operating Fund Web Portal*, in addition to using the *Operating Fund Web Portal* to:

- Download the PHA versions of forms HUD-52723 and HUD-52722.
- Export forms HUD-52723 and HUD-52722 data to *Excel Tools*.
- Review historical eligibility data and reports.
- Identify the status of new project requests.
- Create and submit Application for Federal Assistance (SF-424), Certification of Payments to Influence Federal Transactions (HUD-50071), and Disclosure of Lobbying Activities (SF-LLL).
- Submit PHA versions of forms HUD-52723 & HUD-52722 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 2022

PHAs must have a Dun & Bradstreet Data Universal Numbering System (DUNS) identification and number as well as active registration in the System for Award Management (SAM; www.sam.gov), and an accurate Tax Identification Number (TIN) in the Line of Credit Control System (LOCCS) to receive 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 obtain a DUNS number. **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*.

- A. Form HUD-52723: information on this form is used to calculate the total amount of operating subsidy grant eligibility. HUD posts the *Excel Tool* and instructions for the form HUD-52723 in the *Operating Fund Web Portal*. PHAs download the *Excel Tool* from the *Operating Fund Web Portal* and submit its completed *Excel Tool* to HUD through the Portal.
- B. Form HUD-52722: information on this form is used to calculate the Utility Expense Level. HUD posts the *Excel Tool* and instructions for form HUD-52722 in the *Operating Fund Web Portal*. PHAs download the *Excel Tool* from the *Operating Fund Web Portal* and submit its completed *Excel Tool* to HUD through the Portal.
- C. 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 November 5, 2021, for the PHA to receive operating subsidy grant. Each PHA shall complete only one SF-424 for the entire amount

of its 2022 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 to.

Public Housing Operating Fund Calculation of Operating Fund PHA-Owned Rental Housing Form HUD-52723, Section 5, Certifications:

- 1) Based on PHA submission of the Form HUD-52723 - I hereby certify the information provided on this form and in any accompanying documentation is true and accurate. I acknowledge that making, presenting, submitting, or causing to be submitted a false, fictitious, or fraudulent statement, representation, or certification may subject me to criminal, civil, and/or administrative sanctions, including fines, penalties, and imprisonment. 18 U.S.C. §§ 287, 1001, 1010, 1012, 1014 and 31 U.S.C. §§ 3729, 3802.
- 2) 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.
- 3) (If applicable) In accordance with Section 225 of the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved December 26, 2007) and subsequent acts containing the same provisions, I hereby certify that _____ Housing Agency has 400 or fewer units and is implementing asset management.
- 4) (If applicable) In accordance with 24 CFR 990.260 of Subpart H – Asset Management, I hereby certify that _____ 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.

Signing the SF-424 does not exempt the Officials from making the appropriate certifications and assurance on the listed documents.

- D. Form HUD-50071 Certification of Payments to Influence Federal Transactions: If applicable, PHAs must complete and electronically sign the HUD-50071 in the *Operating Fund Web Portal*.
- E. Other supporting documentation requested by the Field Office.

8a. SUBMISSION PROCESS.

The *Excel Tools* for the forms HUD-52723 and HUD-52722 and instructions for completing *Excel Tools* 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 *Excel Tools* to HUD through the *Operating Fund Web Portal*. **NOTE:** PHAs must submit the *Excel Tools* 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 *Excel Tools* and other required documents to HUD.

8b. PROJECT REGROUPINGS

Project regrouping changes will apply to operating subsidy formula calculations for the following funding year, including transfers and consolidations per Notice PIH-2018-12 which become effective after HUD pulls IMS-PIC project, building and unit characteristics for the calculation of Project Expense Levels (PELs) for the coming funding year. In this case, the operating subsidy formula will continue to include PELs based on project characteristics that existed prior to the regrouping through the current year and incorporate PELs based on the regrouped projects in the following funding year. PHAs should use the PEL estimator to understand the possible financial impact of regroupings before proceeding with regroupings. It must ensure that its accounting treatment of the operating subsidy grant properly treats the funding provided prior to the changes becoming effective.

9. PRE-POPULATED DATA

HUD pre-populates the CY 2022 *Excel Tools* for the forms HUD-52723 and HUD-52722. HUD uses unit status for the reporting period *July 1, 2020, through June 30, 2021*, as reported in the IMS-PIC system to pre-populate the CY 2022 *Excel Tools*. 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: CY 2022 Pre-populated Formula Data

Item Description	PHA Can Edit	Field Office Can Edit
Project Number	No	No
Name of PHA	No	No
Address of PHA	No	No
DUNS Number (pre-populated from LOCCS data)	Yes	Yes
Total number of Annual Contribution Contract (ACC) units for the PHA	No	Yes
Unit status data: Form HUD-52723, Section 2, Categorization of Unit Months, Lines 01, 02, and 05 through 13	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 B ¹	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
ARF: Form HUD-52723, Section 3, Line 14	Yes	Yes
PUM formula income	Yes	Yes
Transition funding ²	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 *Excel Tools* for each project. HUD pre-populates Formula Income, PILOT, 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 *Excel Tools* 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

¹ 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 Fund web page on the completion of *Excel Tools* for new projects.

² 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

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.

10. 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 the source data in IMS-PIC is changed to remain 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 *Excel Tools* to their Field Office. HUD posts pre-populated unit status data via the *Operating Fund Web Portal* in advance of deploying *Excel Tools*. By reviewing the posted data, PHAs can initiate efforts to change the source IMS-PIC data before the tools are deployed.

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 Notice PIH-2020-05 waived the 60-day deadline and provided that PHAs must submit forms HUD-50058 or HUD-50058 MTW for transactions impacted by waivers implemented and alternative requirements of Notice PIH-2020-05 within 90 days of the effective date of action.

Although the waiver provided up to 90 days for PHAs to submit HUD-50058 forms into IMS-PIC, HUD encourages PHAs to continue submitting HUD-50058 forms within the normal 60-day timeframe if the PHAs have the capacity to do so.

HUD normally pulls unit status data from IMS-PIC 61 days after the end of the reporting period (August 30) to prepopulate the form HUD-52723.

11. SUBMISSION OF EXCEL TOOLS FOR NEW PROJECTS

Throughout the funding year, FMD will generate a list of potential new project/units entered by the PHA in IMS-PIC and as approved by the Field Office that have actual Date of Funding

Availability (DOFA) data and in management status. This list will be viewable 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 *Excel Tools* 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 2022, a PHA must email its funding requests to its local HUD Field Offices no later than June 1, 2022. HUD encourages PHAs to request new *Excel Tools* 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 8, 2022.

HUD deploys *Excel Tools* 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 *Excel Tools* for new projects and notify PHAs via email no later than June 15, 2022. To receive funding in 2022 PHAs must submit the *Excel Tools* using the *Operating Fund Web Portal* to the appropriate HUD Field Office no later than June 22, 2022. **Submissions received after the deadline may not be considered for funding in CY 2022.** If the units' criteria for funding was not met in the prior year and the unit was not funded, 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 follow the job aid found here:

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. In addition, 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, reporting period data for the purposes of calculating the Eligible Unit Months (EUMs). Detailed guidance can be found on the CY 2022 *Operating Fund Web Page* here:

12. SUBMISSION OF REQUEST FOR REVISION TO THE CY 2022 OPERATING SUBSIDY GRANT ELIGIBILITY

The submission of a revised *Excel Tool* by a PHA in the *Operating Fund Web Portal* 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 Field Office well in advance to resolve any issues prior to the revision deadline. PHAs may request revisions to their original CY 2022 operating subsidy grant submissions based on any of the four reasons listed below.

- A. Correction of mathematical, clerical, information system, or other errors.
- B. Eligibility for Asset Repositioning Fees or new units in existing projects already under payment (24 CFR 990.155).
- C. Approval of new utilities incentives/contracts pursuant to 24 CFR 990.185, but not including Rate Reduction Incentives.
- D. 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 August 15, 2022. Requests submitted after this date will not be accepted, unless the change lowers the operating subsidy grant eligibility or results from 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 for a specified time frame and for which a PHA receives operating subsidy grants. The *Excel Tools* 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 grant. In general, for Formula Income, PEL, UEL, and most Add-ons to be included in the calculation of 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

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

The UEL is the product of the utility rate, the payable consumption level, 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>

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

Section 2 Column B, Lines 04, 15, and 17 of Form HUD-52723 are used to calculate the number used to populate Line 26 of form HUD-52722. Also, the UEL on Line 27 of the form HUD-52722 must be used to populate Section 3, Part A, Line 5 of form HUD-52723. Funding may be suspended for projects where form HUD-52723 and form HUD-52722 are not consistent with each other.

The Small Rural Frozen Rolling Base Program (SR-FRB). The 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. This three-year period is defined as the Small and Rural Frozen Rolling Base

(SR-FRB). Details on the requirements of the program can be found in Notice PIH-2020-30 (SR-FRB implementation Notice), Notice PIH-2021-30 (the SR-FRB Revision of Application Process Notice) and PIH-2021-17.

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 identified in the SR-FRB Notice PIH-2021-30. As identified in Section 4 of Notice PIH-2020-30, PHAs may make one-time adjustments to the SR-FRB. To the extent that the PHA is seeking an adjustment to the SR-FRB, it must submit documentation required by Notice PIH 2020-30, 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-2021-30. 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 specified in the SR-FRB Notice. HUD reviews the PHAs' submissions received in *Operating Fund Web Portal* in accordance with the requirements of Notice PIH-2021-30, PIH-2020-30, and PIH-2021-17. Where such PHAs submissions comply with program requirements, HUD will update the 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*. PHAs must submit their request to remove the project or projects from the SR-FRB program by the deadline specified in the SR-FRB Notice. As identified in Section 4 of the SR-FRB Notice PIH-2020-30, projects that leave the SR-FRB program may not reenter the program until the 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 the 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 965 Subpart E.

C. Formula Income

Formula income is an estimate of a PHA's rental revenue. The CY 2022 per unit month (PUM) formula income will be pre-populated based on the PHA's approved FY 2020 FASS-PH FDS submission when available. FY 2020 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 2022 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 *Excel Tools* 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) on 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 2022 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 2022 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. 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). Since HUD pre-populates formula income with data from the FDS, the JPEID results in an increase to the operating subsidy grant. After submission HUD will make a manual adjustment to a PHA's HUD-52723 and HUD-52722. 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 the 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 of participation, 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. Also, escrow accounts are established for FSS participants by the PHA.

As the skills of a participant increase earnings likely increase resulting in an increase in the participant's rent. Under the FSS program, the PHA places the rent increase into the 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 the form HUD-52723) 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 *Excel Tools*. 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 a 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.

1) 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 to IMS-PIC. Once the work that required the unit to be vacant has been completed the unit must be either re-occupied by an eligible family or placed in vacant status even if additional modernization work continues.

2) 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. Such units can be placed in this category before the closing of the mixed finance transaction. The units can be kept in this status for up to two years (24 months) prior to the mixed finance modernization closing.

If on schedule, once the mixed finance modernization transaction has closed and modernization has begun the units may remain in Vacant for Modernization status until work is complete. Even if additional modernization work continues, once the work that required the unit to remain vacant is complete the unit must be either reoccupied by an eligible family or placed in vacant status.

To receive Field Office approval to place a unit in Vacant for Modernization status, the planned modernization activity must be in a HUD-approved PHA Annual Plan for non-qualified PHAs (24 CFR part 903); 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 when Capital Funds are also being used for modernization a HUD-approved Capital Fund Program 5-Year Action Plan (24 CFR 905.300).

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

F. 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.

1) 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 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 HUD-52723 when CY 2020 FDS data is available. 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 2022 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.

Ratio = ACC units ÷ (ACC units + non-ACC units)

2) PILOT

For CY 2022, project PILOT amounts are calculated and pre-populated in form HUD-52723 based upon approved CY 2020 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

Calculation:

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

For mixed finance projects the PILOT may not be pre-populated, in which case the PHA submits the owner entity's AFS to the Field Office when submitting the CY 2022 form HUD-52723. For mixed finance projects with both ACC and non-ACC units, the PILOT may need 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.

3) 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>

4) **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.

5) **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-2017-22, as amended. 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.

If the PHAs calculation is accurate and 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 the following documentation to its Field Office along with form HUD-52723.

The Field Office may request additional documentation if needed. The PHA should present a spreadsheet showing the ARF eligibility calculation and related information, including:

- a) Project number and Demo/Dispo application number.
- b) Date of the approval letter.
- c) Number of days to relocation after the approval letter is issued and the resulting planned relocation start date.
- d) 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.
- e) 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
- f) 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 (i.e., all units are disposed of in accordance with section 18 of the 1937 Act and 24 CFR part 970, removed from IMS-PIC and not subject to the ACC) 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. If a PHA has no units under ACC, but one or more of its projects are ARF eligible, those project(s) remain eligible for operating subsidy grants as long as the units remain eligible for ARF.

6) Elderly/Disabled Service Coordinator (EDSC) Program

For CY 2022, 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 2022 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.

7) Add-On-Subsidy (AOS) incentive for 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. 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 developments 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 against the HUD approved AOS request on Line 08, Section 3, of HUD-52723.

8) 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 through proration 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 to the Operating Fund Program.

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

MTW PHAs with alternative operating subsidy grant formula agreements submit requests for operating subsidy grant 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:

- A. Form HUD-52723: Enter data in accordance with the MTW agreement, which generally includes entries for Section 1; Section 3, Part C, Lines 01 and 04; and Part D, Lines 01 and 03.
- B. Documentation supporting the Agreement's formula (i.e., the PHA's calculation workbook for the CY 2022 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 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 forms HUD-52723 and HUD-52722 on a project-level basis in the same manner as regular formula PHAs.

16. THE GENERAL DEPOSITORY AGREEMENT (GDA) – FORM HUD-51999

In accordance with U.S. Treasury requirements and 2 CFR part 200, PHAs are subject to various cash management requirements. Further, Section 9 of the Public Housing Annual Contributions Contract (form HUD-53012A 7/95) 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, 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

A. 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. Any appeals that address single projects and not the entire portfolio will be denied.

B. **Types of Appeals.** 24 CFR 990.245 establishes four types of appeals:

- 1) Streamlined appeal. Requires the PHA to demonstrate a blatant and objective flaw in the application of a specific operating subsidy formula component.
- 2) Appeal for changing market conditions. A PHA 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 located 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.

The other two types of appeals are limited to PEL-related issues. 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 a pre-populated PEL based on (a) effects of specific local conditions, and (b) actual project cost data.

- 3) Appeal for specific local conditions. This appeal requires the PHA to demonstrate that the model generated PEL fails 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 or greater. The cost of services for the independent cost assessment is paid by the appellant PHA.

- 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. 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, its respective Field Office Director, or other PIH staff, as appropriate, regarding any issues or concerns regarding this notice and operating subsidy grant eligibility.

C. 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 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, considering operating subsidy grant eligibility to meet those costs. The person performing the assessment must have appropriate knowledge of multifamily operating costs within the local market. The independent cost assessment must be included in the PHA's submission to HUD, and must include:

- 1) **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 *IMS-PIC Development Submodule User Manual*, pages 4-7, for definitions of building types.)
- 2) **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.
- 3) **Reporting.** Assessments must present the entire PHA's portfolio in a table format and include the following for each individual project:
 - a) Number of units
 - b) Occupancy type
 - c) Building type
 - d) Current PEL
 - e) Appellant's suggested PEL

- 4) 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 990 subpart H for a period of at least two years.

D. Appeal Processing Requirements for CY 2022

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 2022.

“Streamlined,” “local conditions,” and “actual project cost data” appeals must be sent by email to William.G.Jones@hud.gov and Joshua.Blechman@hud.gov with the subject line “Appeal under 24 CFR 990.245.” These appeals must be sent within 60 days of the PHA’s initial submission of CY 2022 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 30 days prior to the revision deadline. If a PEL appeal is granted, HUD will deploy new *Excel Tools* 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)

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 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.³ 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 Calendar Year in which the HAP contract becomes effective.⁴ 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

³ 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.

⁴ The HAP effective date is the day on which HAP payments begin.

development that are converting and will be removed from IMS-PIC. In the year after the HAP effective date, the converted units shall not receive any further operating subsidy grant.

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 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 2022 Operating Subsidy Grant Processing Web Page*, and via HUDCLIPS) for details on adjusting the rolling base. See the *CY 2022 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 2021 or before:

- 1) Projects that are fully converted through RAD with HAP effective dates in 2021 or before are not eligible for the 2022 operating subsidy grant.
- 2) For projects that are fully converted with HAP effective dates in 2021 or before if the conversion happened early in 2021 HUD will not deploy an *Excel Tool* for 2022 for the project. However, if the conversion happened late in 2021, HUD may deploy an *Excel Tool* and/or fund the project in error because of the timing of data availability. If an *Excel Tool* is deployed for a project for 2022, but that project fully converted and has a 2021 HAP effective date, the PHA must not submit the *Excel Tools*. If such a project is funded in 2022, the PHA must not draw down funds and must notify its Field Office that the project should not have been funded.
- 3) The PHA and Field Office must ensure that no EUMs for units that converted through RAD are included in the *Excel Tools* for projects that are partially converted with HAP effective dates in 2021 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.

B. 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).

To receive such designation, the units must be approved by the Field Office, and the unit status correctly reflected in IMS-PIC. Furthermore, the RAD conversion and planned modernization must be in:

- 1) a HUD approved PHA Annual Plan for non-qualified PHAs (24 CFR Part 903);
- 2) a HUD approved Capital Fund Program 5-Year Action 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
- 3) a HUD approved Capital Fund Program 5-Year Action 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. PHAs are reminded: A PHA may not contribute public housing program funds to projects post-RAD conversion 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.

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 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 subsidy funding as Turnkey III units. Once the units are transitioned to regular public housing units, the PHA must ensure that these 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 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 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. (See Notice PIH-2011-69.) Additional information on how the Capital Programs Division determines the Faircloth limit, can be found on the Capital Fund website at:

https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/p_h/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 it 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 the notices regarding those programs). Grant years not identified in the below table are past their closing date.

Fed Fiscal Year	Account Closing Date
FY 2016	9/30/2022
FY 2017	9/30/2023
FY 2018	9/30/2024
FY 2019	9/30/2025
FY 2020	9/30/2026
FY 2021	9/30/2030

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

25. 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.

26. 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).

/s/
Dominique Blom
General Deputy Assistant Secretary
Public and Indian Housing