

Directors, Offices of Public  
Housing; Administrators,  
Offices of Native American  
Programs; Public Housing  
Agencies; Indian Housing  
Authorities; Field Accounting  
Divisions

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Procedures for Obtaining Audit Services for Public Housing Agencies and  
Indian Housing Authorities (HAs) Not In Compliance With Audit  
Requirements

1. PURPOSE The purpose of this Notice is to provide updated administrative procedures to be used by the HUD Field Offices (FO) for Public Housing, and the Area Offices of Native American Programs (ONAP) to implement the provisions of law which permit HUD to obtain audit services for Public Housing Agencies and Indian Housing Authorities (HAs) that have failed to submit timely audits in accordance with the requirements of the Single Audit Act. These procedures include those to be used to select and contract with Independent Auditors (IAs), monitor performance, and arrange for and approve payments through the Field Accounting Divisions (FADs).
2. BACKGROUND Section 118(d) of the Housing and Community Development Act of 1987 provided a new authority to the Department for the use of operating subsidies appropriated under Section 9 of the United States Housing Act of 1937, as amended, to obtain the compliance of Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) with audit requirements. The statutory provision is implemented in the Public Housing operating subsidy regulation at 24 CFR Part 990 and in the Indian Housing regulation at 24 CFR Part 950.

Section 118(d) states as follows:

USE OF OPERATING SUBSIDIES TO REMEDY PHA NONCOMPLIANCE WITH AUDIT  
RESPONSIBILITIES - Section 9(a)(1) of the United States Housing  
Act is amended by adding at the end the following new sentence:  
"If the Secretary

determines that a public housing agency has failed to take the actions required to submit an acceptable audit on a timely basis in accordance with Chapter 75 of title 31, United States Code, the Secretary may arrange for, and pay the costs of, the audit. In such circumstances, the Secretary may withhold, from assistance otherwise payable to the agency under this section, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the agency's books and records in auditable condition."

The provision of Section 118(d) includes the use of operating subsidy for HA-owned rental (both PFS and non-PFS) and HA-owned homeownership (Turnkey III and Mutual Help).

The regulation at 24 CFR 990.120 implements Section 118(d) for PHAs as follows:

AUDIT. PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 44. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the books into auditable condition do not generate additional subsidy eligibility under this part.

The Indian Housing Regulation at 24 CFR 950.120(e) implements Section 118(d) in the same way for IHAs, for both the rental and homeownership programs.

3. ADMINISTRATIVE PROCEDURES<sup>1</sup>

- A. Identification of HAs Not In Compliance. FO Financial Analysts shall consult the System for Management Information Retrieval in Public Housing (SMIRPH) audit module on a quarterly basis to determine which PHAs

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<sup>1</sup> This procedure identifies the Financial Analyst as the responsible individual for co-ordination of audit report information; however, the local HUD office may designate any staff person as the point of contact for audit report co-ordination/monitoring.

have audit reports due but not received. ONAP Financial Analysts will obtain information on the IHA audit status from the Management Information Retrieval System (MIRS).

- (1) The Financial Analyst will prepare a quarterly report based on the information obtained from SMIRPH/MIRS and the responses from HAs to delinquent letter notifications. The report will indicate the names of any HAs who have failed to submit an audit report within one year after the end of the audit period and the reason cited by the HA for the delay. The Financial Analyst will evaluate the HA reason for delay as being either responsive or nonresponsive to the audit requirement and will take into consideration HUD staff knowledge of the HA when applicable. For example:
  - o HAs who either have an IA under contract to perform the required audit work, or are in the process of selecting an auditor, may be considered to be responsive to the audit requirement.
  - o HAs who can demonstrate that they are in the process of updating accounting records, or have arranged for update, or have been approved for HUD technical assistance funding to update the accounting records, and who can provide a realistic estimate of when the update will be completed and an audit obtained, can also be considered to be responsive but should be monitored to assure that they continue to meet established timeframes.
  - o HAs who have not responded at all to the delinquency letter notifications, or who repeatedly have not responded in a satisfactory manner, will be considered as those who are not in compliance with audit requirements.
- (2) The Financial Analyst will specifically identify in the report those HAs who are not in compliance with audit requirements and who have been determined by the HUD staff to have continued inability or unwillingness to have a proper audit. These identified HAs will be considered candidates for HUD arranged IA audits.

- (3) The Financial Analyst will also include in the quarterly report an evaluation and recommendation as to whether the HA that is a candidate for a HUD arranged IA audit is in need of an audit only, or also needs additional services to bring the HA books into an auditable condition. In some cases, this may be a difficult call for the Financial Analyst to make, and may ultimately be determined only after an Independent Auditor (IA) has been selected and begun the audit process.

If additional accounting services are needed to put the books into an auditable condition, the statute allows HUD to withhold operating subsidy for this purpose. However, such an approach would not be appropriate if withholding subsidy would jeopardize the financial status of the HA or would have an adverse effect on the HA's ability to operate the program. Therefore, the Financial Analyst's evaluation must include consideration of the financial status of the HA and indicate if withholding of operating subsidy is possible without causing financial hardship for the HA, or if other funding sources should be considered.

- (4) The Financial Analyst will submit the quarterly report through the appropriate administrative channels to the Public Housing Field Office Director or to the ONAP Administrator, as appropriate. The PH Director or ONAP Administrator will make the final determination that an audit is to be contracted directly by HUD. The decision to contract directly for additional accounting services prior to an audit may be made only after consultation with the office of the District Inspector General for Audit (DIGA) (see paragraph C).

B. Obligation of Operating Subsidy Funds For Payment of Audit Services

The operating subsidy eligibility of HAs for the direct payment of IA costs will differ depending upon whether the situation involves an audit only or an audit plus additional accounting services. The situations will require different approaches by the FO or ONAP Financial Analyst as described below. It should be noted that the HUD Contracting Officer will want to ascertain that the estimated amount of the payment is available (obligated) before issuance of an approved contract.

(1) Audit Only. HAs are eligible to receive operating subsidy, as a specific subsidy element, to cover the actual cost of an independent audit.

(a) If the HA has not included the estimated cost of an IA audit in the HA calculation of operating subsidy eligibility, the Financial Analyst shall revise the calculation form (Form HUD-52723 or Form 53087) to incorporate the estimated cost of the HUD contracted audit. If the HA is not otherwise eligible for operating subsidy, it will become eligible for the estimated audit cost.

(b) The Financial Analyst shall revise (or prepare) the payment schedule, Form HUD 52721, to show the amount of operating subsidy eligibility for the estimated audit cost in "Column c" as retained.

(c) The forms will be transmitted to the FAD with a cover memo explaining that the audit subsidy portion of the obligation is to be retained until direct payment to the accounting firm is approved by HUD.

(d) When the payment to the IA is approved, a memorandum to the FAD, accompanied by another revision to the Form HUD-52721 incorporating the retained amount, will be submitted with specific directions for the issuance of a check to the IA. If the estimated audit cost and the actual payment amount are not the same, an additional subsidy revision will be necessary to reconcile actual audit cost with the estimated audited cost. The key procedural difference for the subsidy payment is the transfer of the obligated amount from a retained status to a payment status, and the directions to the FAD for the request for the Treasury check's dispatch to the IA.

(2) Audit plus additional accounting services. The procedures will be the same as outlined above except:

o Performance Funding System (PFS) subsidy. The HA is not eligible for *additional* PFS subsidy to pay for the additional accounting services required because of the condition of

the HA books of account. The FO may only withhold an amount of previously obligated, but undisbursed, non-audit PFS subsidy eligibility for payment of the additional accounting services.

- o Mutual Help program subsidy. Mutual Help program operating subsidy for accounting services to bring IHA books into an auditable condition should be provided under 24 CFR 950.434(b)(6), Professional Management Contracts, or 24 CFR 950.434(b)(7), Unusual Circumstances.

The payment schedule (Form HUD-52721) will be revised to put both the cost of the audit and the cost of the additional accounting services in the retained status in Column c.

- (3) Proration of Audit Cost. HUD Handbook 7476.1 REV-1, *Audits of PHAs and IHAs by IAs*, directs that the audit cost will be prorated on an equitable basis between development and management, and among the various HA programs, where applicable. This provision will not apply for audits contracted directly by HUD under the previously cited regulation. The statutory authority authorizes only the use of operating subsidies appropriated under Section 9 of the U.S. Housing Act, as amended. Therefore, the total audit cost will be covered through the use of operating subsidies for HA-owned rental and homeownership programs. The total cost will incorporate any additional costs incurred because of other programs and funds administered by the HA, to the extent they exist.

- C. Government Technical Representative (GTR)/Government Technical Monitor (GTM) Responsibilities. In those instances where these provisions are approved and utilized, the HUD FO and ONAP Financial Analysts will act as GTRs or GTMs (see Handbook 2210.13). They will be tasked with the additional burden of seeing that the HA cooperates with the IA and of evaluating, in consultation with DIGA, a determination that additional services are required to bring the HA books of account into an auditable condition. Such additional services are contemplated by Section 118(d) of the HCD Act of 1987, cited above, but may only be approved after a determination of their necessity has been reviewed by the involved HUD program offices and the DIGA.

- D. Contracting for Services. The FO and ONAP Financial Analysts shall prepare and submit a request for contract services (form HUD-720 or equivalent for formal contracts, or HUD-10.4 for small purchases) to the Contracting Branch of the Administrative Service Center Contracting Division for award of a contract pursuant to the Federal Acquisition Regulation and HUD Acquisition Regulation. In order to avoid a conflict of interest, it will be necessary for HUD to contract with a separate accounting firm in addition to the IA in instances where there has been a determination that additional work is needed to put the HA books into an auditable condition. A separate request, funding certification, and associated statement of work, must be developed for the audit contract with the IA and for the contract with a firm for any necessary additional accounting services to bring the books into an auditable condition. The servicing contract office will ascertain that the estimated amount of the payment is available (obligated), before issuance of an approved contract.
- E. Preparation and Submission of Audit Reports. HA audits must conform to the requirements of the Single Audit Act of 1984, Office of Management and Budget (OMB) Circular A-128, including the Public and Indian Housing (PIH) Compliance Supplement, and Government Auditing Standards issued by the Comptroller General of the United States.

Audit reports shall be prepared and submitted by the IA to the local HUD office. The local HUD office will distribute the audit report to the HA, the HA Board of Directors, the Federal Audit Clearinghouse, and the appointing official in the HA community, in accordance with the requirements of HUD Handbook 7476.1, *Audits of PHAs and IHAs by IAs*.

A transmittal letter from the Director of Public Housing or the ONAP Administrator, as appropriate, should accompany the distributed IA report identifying it as an audit that was contracted directly by HUD, along with the name(s) of the person(s) in the FO or ONAP to whom inquiries should be directed.

F. Payments to Contractors.

- (1) Payment for additional accounting services. After the HA books of account have been brought into an auditable condition in accordance with the terms of the contract, the FO or ONAP will review and approve the accountant's invoice for payment and submit a revised Form HUD 52721 to FAD, in accordance with paragraph B, with specific directions for issuance of a check to the accounting firm.
- (2) Payment to IA for audit. When the FO or the ONAP receives an audit report that satisfies the contract requirements, the full cost may be approved for payment in accordance with paragraph B. If desired by the local HUD Office, and reflected in the contract statement of work, the contract may call for partial payment at various stages of the audit, or at the time the audit report is submitted by the IA and prior to review and final approval by the local HUD Office.

G. Special Cases. If a case occurs where an HA has failed to procure an audit and requires accounting services to place the books into an auditable condition, but does not have sufficient operating subsidy eligibility to offset for the cost (or if withholding subsidy would cause a financial hardship), the local HUD office should consult with the applicable Headquarters program office: PIH, Finance & Budget Division at 202-708-1872; ONAP, Housing Management Division at 202-755-0088.

/s/Kevin Emanuel Marchman  
Acting Assistant Secretary  
for Public and Indian Housing