



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention of
Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

Notice PIH 2008-03 (HA)

Issued: January 16, 2008

Expires: January 31, 2009

Cross Reference: Notice PIH 2007-7 (HA)

SUBJECT: Guidance on Appeals under 24 CFR part 990, Subpart G, for Calendar Year 2008

1. Purpose

This notice provides processing instructions to public housing agencies (PHAs) and field offices for certain appeal requests pursuant to 24 CFR part 990, The Public Housing Operating Fund Program, for Calendar Year (CY) 2008. Subpart G of the rule contains specific grounds for the appeal of subsidy amounts along with requirements applicable to each appeal type.

2. Types of Appeals

Section 990.245 of the rule establishes five types of appeals:

- **Streamlined appeal.** This appeal requires the PHA to demonstrate that there is a blatant and objective flaw in the application of a specific operating fund formula component. An example would be the application of an incorrect geographic coefficient because the PHA is shown as being in Springfield, IL, when in fact the PHA is located in Springfield, MA.
- **Appeal of formula income for economic hardship.** A PHA may appeal to have its formula income adjusted from the level frozen in 2004 (in accordance with § 990.195(c) of the rule) in order to reflect a severe local economic hardship that is impacting the PHA's ability to maintain rental and other revenue. An example of an appeal of formula income for economic hardship would be the closure of a major local employer that has affected tenant incomes and, therefore, tenant contributions to rent.
- **Appeal for specific local conditions.** An appeal for specific local conditions requires the PHA to demonstrate that the model-generated project expense levels (PELs) fail to reflect local conditions. To be eligible for a change in subsidy for an appeal for specific local conditions, the PHA must demonstrate a variance of ten percent or greater in its PEL. For this type of an appeal, the PHA must show verifiable proof through the use of an independent assessor that the formula generated PEL is not accurate for that market, based on expenses at comparable properties where the PHA is located.

- **Appeal for changing market conditions.** A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions after the PHA has taken aggressive marketing and outreach measures to rent these units. The vacancies cannot be the result of action or inaction by PHA management. For example, a PHA that is located in an area experiencing rapid population loss or economic dislocation may face a decrease in demand for its units, even after the PHA has taken aggressive marketing and outreach measures.
- **Appeal to substitute actual project cost data.** A PHA may appeal to HUD to change its PEL when it can produce project cost data, derived from actual asset management as outlined in subpart H of the rule, for a period of at least two years. In this instance, the PHA must also submit a cost assessment conducted by an independent assessor.

3. Processing Requirements for CY 2008

In accordance with PIH Notice 2007-21, issued July 23, 2007, appeals for **formula income** and **changing market conditions** are handled through the PHA's normal request for operating subsidy (form HUD-52723, Operating Fund Calculation of Operating Subsidy).

Streamlined, specific local conditions, and substitute actual project cost data appeals should be submitted to: U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center, Financial Management Division, 550 12th St., SW, Washington, D.C., 20410. Contact person: Andrea Williamson (telephone 202-475-8607). Appeals covering these three categories must be postmarked by April 30, 2008. A second copy of the appeal should also be submitted to the PHA's field office. The cover memo should reflect that a copy of the appeal was transmitted to the Public Housing Director at the PHA's local field office.

For specific local conditions and actual project cost data appeals (see Item 2), HUD will engage the services of a second professional assessor familiar with property management practices and costs in the region or state in which the appealing PHA is located to review the assessment submitted by the PHA and make a recommendation to HUD. This professional's review and recommendation(s) on the appeal will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination.

For CY 2008, it is expected that HUD will issue final appeal decisions by August 1, 2008. If an appeal is granted, HUD will adjust the PHA's subsidy by the appropriate amount retroactive to the beginning of the year.

4. Special Requirements for Appeals

- **Entire portfolio.** As provided in § 990.240 of the rule, all appeals are voluntary and must cover the PHA's entire portfolio, not single projects. As a result, the appeal must be the result of something that affects the entire portfolio, not an event that is particular to a single project or set of projects. Therefore, an appeal that addresses single projects and not the portfolio in its entirety is subject to immediate denial. As an exception to an

appeal covering a PHA's entire portfolio, the Assistant Secretary for Public and Indian Housing (or designee) has the discretion to accept appeals for less than an entire portfolio for PHAs with greater than 5,000 public housing units.

- **Independent assessments.** For appeals citing specific local conditions and appeals to substitute actual project cost data, the PHA is required to acquire, at its own expense, an independent cost assessment of its projects. The assessor must have appropriate knowledge of multifamily operating costs in the local market. The assessor must complete an individual cost assessment on each public housing project. PHAs with more than 5,000 units may request to the Assistant Secretary for Public and Indian Housing that assessments be performed on less than the entire portfolio.

5. Information to be Included with the Appeal

- **Streamlined appeal.** The PHA should describe the reason for the streamlined appeal and include all supporting documentation.
- **Appeal for specific local conditions.** The PHA must submit an independent assessment from an assessor procured by the PHA as described in Item 4, above, for each project. Special attention should be focused upon:

Comparable Data: It is the responsibility of the PHA to ensure that data cited within the appeal is verifiable by the Department. Data should clearly identify the source and specify where it can be found. Comparative data should be itemized and include the following: locality, occupancy type, building type, and project expense levels. (For reference, page 4-7 of the Public and Indian Housing *PIC Development Submodule User Manual* lists definitions of building types).

Adjustments: When adjustments are made to the comparative data, the PHA should clearly explain the nature of the adjustment, the reason for the adjustment, and the method utilized, citing source documents where applicable.

Reporting: Each submission must describe the entire PHA's portfolio in the form of a table. The table should include the following for each individual project: (1) the number of units; (2) occupancy type; (3) building type; (4) current PEL; and (5) the appellant suggested PEL. The table should then also present the appellant's unit-weighted average PEL for the entire public housing portfolio as compared with the unit-weighted average PEL assigned by HUD.

- **Appeal to substitute actual project cost data.** In addition to the requirements listed above for appeals for specific local conditions, the PHA must: (1) provide two years of actual cost data and show that those costs are not greater than expenses at comparable properties in their local market; and (2) provide documentation certifying that the PHA has completed transition to asset management per § 990.290.

Paperwork Reduction

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB approval number 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 control number.

_____/s/_____
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General Deputy Assistant Secretary for Office of
Public and Indian Housing