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 2007-16

Issued: June 18, 2007

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Cross Reference: PIH Notice 2006-14; PIH Notice 2006-35

Subject: **Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 1 and Year 2 Applications**

1. Purpose

This notice provides information for public housing agencies (PHAs) that wish to submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the Operating Fund Program regulations (24 CFR part 990), commonly referred to as the "stop-loss" provision. This notice applies only to PHAs that: (1) lose funding under the new formula; and (2) wish to submit documentation in accordance with the requirements for Year 1 and Year 2.

24 CFR990.230(d) states:

> If a PHA can demonstrate a successful conversion to the asset management requirements of subpart H of this part, as determined under paragraph (f) of this section, HUD will discontinue the reduction at the PHA's next subsidy calculation following such demonstration…[.]

2. Deadlines for Successful Conversion to Asset Management and Stopping Losses of Operating Subsidy

On April 10, 2007, HUD published on its Asset Management website at:

www.hud.gov/offices/pih/progams/ph/am/

an announcement extending the Year 1 and Year 2 stop-loss deadlines, previously published under PIH Notice 2006-35 and PIH Notice 2006-14. Table 1 shows the revised deadline dates by which PHAs must demonstrate to HUD that they have successfully converted to asset management in order to have their losses stopped; the date the submissions are due; the corresponding percent at which the losses will be stopped; and the calendar year in which that stop in the losses will take effect.

Table 1: Stop-Loss Demonstration Time Line and Effective Dates			
Demonstration Date By	**Applications Due**	**Reduction Stopped At**	**Reduction Effective For**
September 30, 2007	October 15, 2007	5% of the PUM difference.	Calendar Year 2007 and thereafter
April 1, 2008	April 15, 2008	24% of the PUM difference.	Calendar Year 2008 and thereafter
October 1, 2008	October 15, 2008	43% of the PUM difference.	Calendar Year 2009 and thereafter
October 1, 2009	October 15, 2009	62% of the PUM difference.	Calendar Year 2010 and thereafter
October 1, 2010	October 15, 2010	81% of the PUM difference.	Calendar Year 2011 and thereafter

As an example, assume that a PHA would have received $55.00 per unit month (PUM) less in FFY 2004 under the final rule than it received under the interim rule. If this PHA successfully applies under the October 15, 2007, deadline, the amount of its reduction in subsidy will be stopped at just 5 percent of the difference between the two operating subsidy levels. Therefore, 95 percent (100 percent minus 5 percent) of the PUM difference between the two levels, or a transition amount of $52.25 PUM, will be multiplied by Eligible Unit Months, which amount will then be added to the lower operating subsidy level under the new formula. This computation will occur each calendar year that the PHA remains in compliance with the asset management requirement, until such time as a new formula is developed and implemented.

3. Criteria for Successful Conversion

- **Year 1 Submissions**. Except as noted in Attachment A, all provisions of Notice PIH 2006-35, as well as those contained in the July 13, 2006, Stop-Loss Submission Kit, remain applicable for Year 1 submissions.

- **Year 2 Submissions**. For Year 2 stop-loss submissions, PHAs must fully meet all of the seven criteria in Attachment B. A new Stop-Loss Submission Kit for Year 2 will soon be posted on HUD's Asset Management website, referenced above.

Although § 990.260(b) permits PHAs that have less than 250 units to combine all developments into one project, if these PHAs want to apply for stop-loss, they should group their projects in accordance with the criteria under Item 4, Guidelines for Determining Projects, in PIH Notice 2006-10, Identification of Projects for Asset Management.

4. Independent Assessor

Pursuant to § 990.230(f), PHAs must select from a list of HUD-approved professionals to conduct an independent assessment of compliance with the conversion to asset management. In the event that HUD is unable to produce a list of independent assessors on a timely basis, pursuant to § 990.230(f), the PHA may submit its own demonstration of successful conversion directly to HUD. Later in 2007, HUD will notify PHAs if a list of assessors will be available to them on a timely basis.

5. Determination of Fee Reasonableness

Section 990.280(b)(4) of the final rule requires that project-specific operating expenses shall include a "reasonable" property management fee that is used to fund operations of the central office. For a PHA to demonstrate successful conversion to asset management, a PHA must show that its fees are reasonable and that it can operate its central office cost centers based on its fee income and other business activity.

With respect to fee income, stop-loss applicant PHAs may refer to the guidelines contained in PIH Notice 2007-9, Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule (24 CFR part 990), issued April 10, 2007. PHAs may also refer to PIH Notice 2007-9 to determine which costs are to be funded through fees and which are to be classified as front-line expenses.

6. Continued Eligibility

PHAs must maintain their compliance with the asset management requirements of the Operating Fund Program to continue to have their losses stopped. Any PHA found not to be in on-going compliance with these and future requirements will have its subsidy returned to pre-stop loss levels the next calendar year. The way in which any such adjustments are to be made will be covered in future guidance.

7. Submission Requirement

A PHA may submit a stop-loss package at any time prior to the required submission date. HUD will generally review stop-loss applications on a "first come, first serve" basis. However, resubmitted application packages from PHAs whose original stop-loss applications were rejected will not be reviewed until all other stop-loss packages have been processed. Accordingly, due to the large number of applications, HUD cannot guarantee that such resubmissions will be reviewed and processed in time to qualify for stop-loss.

PHAs should send their submission packages to: Andrea Williamson, U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center, Financial Management Division, 550 12th Street, SW, Washington, DC 20410. Submission packages must be post-marked, or otherwise received, by the submission dates contained in Table 1.

8. Process

Upon receipt of a stop-loss submission package, HUD will review the application for completeness. If the application is found to be incomplete, HUD will return it for additional information.

HUD may also determine that an on-site assessment is required. In such circumstances, the PHA will be provided with a written justification of HUD's determination. At the conclusion of any on-site assessment, the independent assessors (or, in the event that independent assessors are not available, HUD) will schedule an exit conference with the PHA, to discuss the assessment finding and provide the PHA with an opportunity to respond.

The Assistant Secretary for Public and Indian Housing (or designee) shall consider all information submitted by the PHA and respond with a final determination of compliance. A PHA's failure to satisfy any one of the seven criteria described in Attachment B is sufficient grounds to deny compliance with a successful conversion to asset management. When it is apparent to the assessors that the PHA will fail one or more criteria, the assessor can proceed with a limited review of the remaining criteria.

9. 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/

Orlando J. Cabrera
Assistant Secretary for Public and Indian Housing

Attachment A: Changes in Year 1 Criteria and Submission Requirements

All provisions of Notice PIH 2006-35, as well as those contained in the July 13, 2006, Stop-Loss Submission Kit, remain applicable for Year 1 submissions, except as noted below.

1. **Submission Due Date:** All Year 1 submissions must be postmarked by October 15, 2007.

2. **Reporting Periods for Project and Central Office Cost Center (COCC) Budgets:** For PHAs applying for stop-loss under the new deadline of October 15, 2007, the project and COCC budgets must reflect the following **minimum** reporting periods, depending on the PHA's fiscal year-end. <u>Please note that these budgets, both project and COCC, must also be Board-approved.</u>

Fiscal Year-End	Budget Period	Comment/Note
June	July 1, 2007-June 30, 2008	These PHAs are required under the Operating Fund Program final rule to begin project-based budgeting by July 1, 2007.
September	October 1, 2007-September 30, 2008	
December	October 1, 2007-December 31, 2007	Additionally, these PHAs shall submit, postmarked no later than December 15, 2007, budgets for their fiscal years beginning January 1, 2008.
March	October 1, 2007-March 31, 2008	

In other words, PHAs should submit budgets beginning October 1, 2007, through the end of their fiscal years, with the exception of June-ending PHAs, which must submit budgets for the fiscal year beginning July 1, 2007, consistent with implementation of the Operating Fund Program final rule.

3. **Submission of Operating Statements:**
   - *PHAs with fewer than 250 units*. June-ending PHAs must submit operating statements for the period July 1, 2007-September 30, 2007, which must be postmarked by October 31, 2007. All other PHAs must submit operating statements for the period October 1, 2007-December 31, 2007, which must be postmarked by January 31, 2008.
   - *PHAs with 250 or more units*. June-ending PHAs must submit operating statements for the period July 1, 2007-September 30, 2007 <u>with their stop-loss applications</u> (postmarked by October 15, 2007). All other PHAs must submit operating statements for the period October 1, 2007-December 31, 2007, which must be postmarked by January 15, 2008.

Attachment B: Criteria for Successful Conversion under Year Two Deadline

Criteria	Elements
1. Project-Based Budgeting and Accounting	a. The PHA's Board has approved the operating budget for each project that reasonably reflects the anticipated revenues and expenses for the project. b. These project-based budgets must be inclusive of all central office charges, including management fees, fees for centralized services, etc. c. The PHA (or its management agent) produces monthly operating statements for each project that contain the revenues and expenses of each project compared against budgeted levels, including all fees and charges from the central office cost center. For this second year of applications, project-specific balance sheets are not required. d. Proceeds from the Capital Fund Program, energy performance contracts, and other sources to support project operations must also be reflected in the operating statements for each project. (Capital items funded from the Capital Fund Program are not required to be included in these project-specific operating statements.) e. The operating statements must reasonably represent the financial performance of each project and must be inclusive of all central office charges, including management fees, fees for centralized services, etc. f. The PHA maintains all records to support financial transactions.
2. Project-Based Management	Property management services are arranged or provided in the best interest of the project, considering such factors as needs, cost, and responsiveness, relative to local market standards.
3. Central Office Cost Center	a. All central office fees (property management, asset management, bookkeeping, etc.) must be reasonable, as defined under Item 5 of this notice. b. The central office cost center must operate on the allowable fees and other permitted reimbursements from its Public Housing and Housing Choice Voucher Programs, as well as revenue generated from non-public housing programs. c. Solely for the purposes of stop-loss, a PHA may not fund the operation of the central office cost center with: (1) proceeds from the sale of assets acquired with public housing funds; (2) amounts from the Capital Fund Program other than those permitted for administration/planning. For example, an agency requesting stop-loss cannot use "Management Improvement" funds to pay for general accounting staff; or (3) funds received from state or local governments for the purpose of supporting operations of the center office cost center, i.e., non fee-income.
4. Centralized Services	a. Centralized functions that directly support projects must be funded using a fee-for-service approach or through other allowable charge-backs. b. Each project is charged for actual services received. c. Centralized services are consistent with the needs of, and are in the best interests of, the project. d. Centralized service charges must be reasonable based on demonstrated data from the local market.
5. Review of Project Performance	a. The PHA systematically reviews information regarding the financial, physical, and management performance of each project, including utility consumption, and identifies non-performing properties. For the purposes of this initial stop-loss deadline, a non-performing property is one that: (1) receives a REAC physical inspection score of less than 70; (2) has significant crime and drug problems (defined as incidence of Part I and Part II Crimes, in accordance with Uniform Crime Reporting, that exceed the surrounding community by 120%); (3) is below 95% occupancy; (4) has tenant accounts receivable that exceed 7% of monthly rent roll; (5) would receive a "D" or lower score under the Public Housing Assessment System (PHAS) for the Management Operations sub-indicators related to vacant unit turnaround and work orders (emergency and non-emergency); (6) has utility consumption exceeding 120% of the agency average; or (6) has other major management problems.

Criteria	Elements
	b. For any projects identified as non-performing, the PHA shall have a management plan that includes a set of recommendations and measurable goals that effectively address the area(s) of non-performance.
6. Long-term Capital Planning	a. The PHA has a physical needs assessment for each project. b. The PHA has a five-year capital plan for each project that is realistic in terms of expected revenue sources, market, tenancy, and project needs. c. The PHA has demonstrated a commitment to an annual reduction in energy and utility consumption through a plan, the use of HUD's incentives, or the use of Energy Star equipment for retrofits.
7. Risk Management Responsibilities Related to Regulatory Compliance	In accordance with § 990.270, asset management includes risk management responsibilities related to regulatory compliance. A PHA is not properly carrying out its risk management responsibilities related to regulatory compliance if it: a. Is designated troubled under the PHAS for physical condition, financial condition, management operations, or the Capital Fund Program; b. Has any outstanding FHEO compliance findings or a Voluntary Compliance Agreement (VCA) that have not been implemented; c. Does not have a current energy audit; d. Has any outstanding IG audit findings greater than six months old without demonstrated progress being made; e. Is not in compliance with Admissions and Continued Occupancy Policies (ACOP) and other related occupancy directives; f. Is not making satisfactory progress under Rental Housing Integrity Improvement Project/Rental Integrity Monitoring (RHIIPS/RIM) Corrective Action Plans (e.g., RIM review findings with open improper rent collections/payment findings); g. Is not in compliance with PIH Notice 2005-17, Reporting Requirements for the Family Report (Form HUD-50058) to the Public Housing Information Center (PIC). PHAs are considered in compliance with form HUD-50058 reporting requirements if their public housing reporting rate, as measured by the PIC Delinquency Report, is at or above 95% at the time of their most recent assessment period; h. Is not meeting the statutory Capital Fund Program obligation and expenditure deadlines; or i. Has any other major compliance deficiency. HUD may consider a PHA's progress in addressing the above compliance issues and other extenuating circumstances.