



**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 2016-19

Issued: November 29, 2016

This notice remains in effect until amended, superseded or rescinded

Subject: Public Housing Operating Subsidy Eligibility Calculations for Calendar Year (CY) 2017

1. Purpose

This notice provides public housing agencies (PHAs) with instructions for the calculation of Operating Subsidy eligibility for CY 2017.

2. Background

- A.** HUD provides operating subsidies for public housing at the project level on a calendar year basis. Separate operating subsidy calculation forms must be submitted for each project identified in the Inventory Management System/Public and Indian Housing (PIH) Information Center (IMS/PIC).
- B.** HUD uses data that PHAs enter into HUD systems, most notably IMS/PIC unit status data, to run the Operating Fund formula. Aside from normal unit turnover, HUD anticipates only limited unit status changes. However, PHAs must ensure that all data on their Operating Subsidy forms are correct. PHAs may work with their respective HUD Field Office (FO) to edit their unit status data.

Beginning in Federal Fiscal Year (FFY) 2008, Congress allowed PHAs with 400 or fewer public housing units to elect to be exempted from any asset management requirement imposed by HUD in connection with the Operating Fund rule. If this exemption is removed in the FFY 2017 appropriations, instructions for making modifications to past submissions of the Excel Tool by previously-exempt PHAs will be posted on the CY 2017 Operating Subsidy Processing web page. (See link below.)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/of/opfnd2017

3. HUD's Initial Obligation of CY 2017 Operating Subsidy

The initial obligation process for CY 2017 Operating Subsidy involves actions by both HUD and PHAs. HUD will generate an inventory list identifying projects determined to be eligible for funding based on IMS/PIC building and unit data, and will notify PHAs when it is available via the Financial Management Division's (FMD's) listserv. (PHAs can sign up to be on the FMD's listserv using the link below.) PHAs will review and validate the list or contact and advise their respective FO within 10 business days if there are any HUD errors (e.g., eligible projects missing from the list, or ineligible projects on the list). HUD will use the validated or corrected inventory list to generate the Operating Fund Calculation electronic forms, HUD-52723 and HUD-52722 (Excel Tools). PHAs will then use the Excel Tools to request CY 2017 Operating Subsidy. If HUD generates a Tool for a project that is not eligible, the PHA should not submit that Tool.

Link to FMD Listserv Signup Web Page

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am

HUD will publish a document submission schedule on the CY 2017 Operating Subsidy Processing web page (see link below). HUD's initial obligation of operating subsidy funding for CY 2017 may be based on estimates. Therefore, if a PHA finds that the estimated eligibility exceeds the project's actual eligibility for 2017, the PHA should not draw down any excess funds and should immediately notify the appropriate FO. HUD will recapture any funded amounts for any project deemed ineligible or any project that was overfunded in any obligations based upon estimates. HUD will either offset future obligations or recapture funds after a determination of eligibility is made. Details of the methodology used to calculate the estimates will be posted on the CY 2017 Operating Subsidy Processing web page. Please check this page periodically for any updates on scheduling and initial obligation methodology.

4. General Operating Subsidy Submission Processing for CY 2017

A. Required Forms and Documentation

For HUD to determine operating subsidy eligibility under the Operating Fund formula, PHAs must complete and submit the following two forms for each project:

- i. HUD-52723, Operating Fund Calculation of Operating Subsidy; and
- ii. HUD-52722, Operating Fund Calculation of Utilities Expense Level.

PHAs must also submit the following forms and documentation, as applicable:

- (a) Form SF-424, Application for Federal Assistance, is required as part of the government-wide *e-grants* management initiative (refer to the CY 2017 Subsidy Processing web page for guidance on how to complete this form). Each PHA shall submit only one form SF-

424 via email to the appropriate FO with the scanned document attached. (A PHA may fax the form SF-424 with prior FO approval.)

PHAs must have a Dun and Bradstreet Universal Identifier Numbering System (DUNS) number as well as active registration in the System for Award Management (SAM; www.sam.gov) to receive funds from HUD's financial systems. If a PHA does not have a DUNS number, the CY 2017 Subsidy Processing web page provides directions on how to obtain one. HUD may suspend or not obligate Operating Subsidy for PHAs that do not comply with the above requirements.

- (b) Form 50071, Certification of Payments to Influence Federal Transactions. Each PHA shall submit only one Form 50071.
- (c) Other supporting documentation requested by the FO.

B. Submission Process

Instructions for completing the Excel Tools and other required forms will be posted on the CY 2017 Operating Subsidy Processing web page. Forms must be submitted by email to the local HUD FO. Failure to meet the submission deadline posted on the web site will be interpreted as a rejection of the Operating Subsidy by the PHA.

NOTE: PHAs must submit the forms to HUD regardless of whether they are prepared by the PHA's fee accountant or any other entity acting on behalf of the PHA. Fee accountants or entities other than the PHA may not submit the forms directly to HUD.

C. Pre-populated Data

To reduce PHA reporting burden and in accordance with 24 CFR 990.135(b)(2), information that PHAs have submitted in HUD's systems of record [including IMS/PIC and the Financial Assessment Subsystem – Public Housing (FASS-PH)] will be used to pre-populate the CY 2017 Excel Tools.

Unit status and other data for the July 1, 2015 through June 30, 2016 reporting period will be extracted from IMS/PIC and summarized at the project level in the CY 2017 Excel Tools. Asset Repositioning Fee (ARF) eligibility will be determined based upon IMS/PIC data as well. If the pre-populated data are incorrect, entries may be edited by the PHA and/or the FO in accordance with Table 1 below and the instructions that follow.

Table 1: CY 2017 Pre-populated Formula Data

Item Description	PHA Can Edit	FO Can Edit
Project Number	No	No
Name of PHA	No	No
Address of PHA	No	No
ACC Number	No	Yes
DUNS Number	Yes	Yes
Total number of ACC units for the PHA	No	Yes
Unit status data: HUD-52723, Section 2, Categorization of Unit Months, Lines 01, 02, and 05 through 13	No	Yes
*Unit status data: HUD-52723, Section 2, Categorization of Unit Months Lines 03 and 04; Column B, Lines 6a and 17, Column B	Yes	Yes
Per Unit Month (PUM) project expense level (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
Asset Repositioning Fee: HUD-52723Section 3, Line 14	Yes	Yes
PUM formula income	Yes	Yes
Transition funding	No	No

*In HUD-52723, unit status data in Section 2, Categorization of Unit Months, Column A, Lines 03 and 04 are new units that are not picked up in the pre-populated reporting data and are editable by the PHA.

D. FO Changes to Categorization of Unit Months Pre-Populated Data

When FOs implement changes to categorization of unit months pre-populated data, appropriate documentation from the PHA is required to demonstrate that pre-populated IMS/PIC data is incorrect for:

- (i) Occupied dwelling unit months (Section 2, Column A, Line 01 of the HUD- 52723), there is an increase of 3% or more from the pre-populated number; or
- (ii) Units vacant unit months (Section 2, Column A, Line 11 of the HUD-52723) that are not categorized in section iii below, there is a decrease of 3% or more from the pre-populated number; or
- (iii) The aggregate of Lines 02 and 05–12 (excluding Line 11), Section 2, Column A, of the HUD-52723, there is an increase of 3% or more from the pre-populated number.

This documentation must include, at a minimum documentation that the:

- (i) Cause of the data discrepancy was beyond the control of the PHA and,
- (ii) PHA made timely efforts to resolve the discrepancy [a Technical Assistance Center (TAC) ticket number is required to demonstrate timely effort].

FOs may request any additional documentation considered necessary.

5. Submission of New Project Excel Tool and Request for Revision to CY 2017 Operating Subsidy Eligibility

- (i) Submission of New Project Excel Tools

After new project tools for the CY 2017 Operating Subsidy Processing are posted online, PHAs will have five business days (but not later than July 17, 2017) to submit the new project tools to their respective FOs. In the absence of such submissions, the new projects will not be considered for funding under the CY 2017 Operating Subsidy.

- (ii) Request for Revision

The submission of a revised tool by a PHA to its FO constitutes a request for a revision. In making such submission, a PHA should provide a narrative explanation of the change being requested, and the reason for the change. Prior to making its revision request, the PHA should initiate contact with the FO sufficiently in advance so that they can resolve any issues prior to the revisions deadline. PHAs may request revisions to their original CY 2017 operating subsidy submissions based on any of the four reasons listed below. All revision requests must be submitted to the appropriate FO **no later than August 1, 2017**, to allow sufficient time for FO review and for the inclusion of any resulting changes to eligibility in the final calculations of operating subsidy eligibility prior to the end of FFY 2017. (PHAs may want to submit their revisions a week before the deadline in case the FO needs additional information.) **Requests for revisions shall NOT be accepted after August 1, 2017.** Such revisions include:

- (a) Correction of mathematical, clerical, information system or other errors;
- (b) Approval of demolition or disposition of units (24 CFR 990.155);
- (c) New utilities incentives/contracts (24 CFR 990.185); or
- (d) Appeals submitted in accordance with this notice and approved by HUD (pursuant to 24 CFR 990.245).

6. Other Operating Subsidy Calculation Information and Add-Ons

A. Project Expense Level (PEL)

The PEL is the model-generated estimate of the cost to operate 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:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/pels

Note that changes, which become effective after HUD pulls IMS/PIC project, building and unit characteristics for the calculation of PELs for CY 2017, will apply to CY 2018 operating subsidy calculations.

B. Formula Income.

Formula income is an estimate of a PHA's rental revenue. The PUM formula income will be pre-populated based on the PHA's most recently approved FY 2015 FASS-PH Financial Data Schedule (FDS) submission. Guidance on permitted changes to the pre-populated data, and required supporting documentation that must be submitted when PHAs make changes to the pre-populated data can be found on the CY 2017 Operating Subsidy web page.

Special guidance for capturing the resident-paid utilities incentive in a HUD-approved energy performance contract on HUD-52723, Section 3, Part B, Line 02: EPC Resident Paid Utility (RPU) Energy Performance Contract (EPC), is on the Calendar Year 2017 Operating Subsidy Processing web page.

C. Cost of Independent Audit

A PHA is eligible to receive operating subsidy equal to its most recent actual audit costs for the Operating Fund Program when an audit is required by the Single Audit Act or when a PHA elects to prepare and submit such an audit to HUD. The most recent actual audit costs include the associated costs of an audit for the Operating Fund Program only. A PHA whose operating subsidy is determined to be zero based on the formula is still eligible to receive operating subsidy equal to its most recent actual audit costs [24 CFR 990.190(d)].

Project audit costs will be pre-populated in the Excel Tool. The pre-populated costs reflect the most recently approved CY 2015 FASS-PH FDS submissions. If a project's most recent actual audit cost differs from the amount pre-populated, the PHA should enter the project's most recent actual audit cost and attach proof of payment to the CY 2017 submission.

D. Payments in Lieu of Taxes (PILOT)

Project PILOT amounts will be pre-populated in the Excel Tool. The pre-populated amounts reflect the most recently approved CY 2015 FASS-PH FDS submissions. If a project's most recent actual PILOT amount is greater than the amount pre-populated, the PHA may enter the project's most recent actual PILOT amount and attach proof of payment to the CY 2017 submission.

24 CFR 990.190(c) stipulates 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 that PILOT shall be 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 public housing agency to perform any obligation under such agreement." PILOT is pre-populated in the HUD-52723 form by calculating 10 percent of shelter rents. If one of the lesser amounts identified in (i), (ii) or (iii) above apply, the PHA must overwrite the pre-populated amount with the lesser amount.

E. Asset Management Fee

- i. PHAs with 250 public housing units under ACC (400 or more units under the asset management exemption appropriations provision) must comply with asset management requirements under 24 CFR 990.255 – .290 (Subpart H). PHAs not in compliance with asset management requirements will forfeit the asset management fee pursuant to 24 CFR 990.190(f). In determining compliance with asset management, FOs will review the PHA's most recent financial submission approved by HUD, and other relevant material.
- ii. For PHAs that are in compliance with the regulatory asset management requirements: (1) PHAs with at least 250 units are eligible for a \$4 PUM asset management fee; and (2) PHAs with fewer than 250 units that elect to transition to asset management are eligible for a \$2 PUM asset management fee. PHAs with only one project regardless of the number of units are not eligible for an asset management fee pursuant to 24 CFR 990.190(f).
- iii. Even if a PHA has opted out of asset management, it must continue to request operating subsidy *for each project shown* in IMS/PIC (i.e., not all projects combined into one) on the date HUD pulls the project, building and unit data (see 6A above).

F. Information Technology Fee

Each PHA's operating subsidy calculation shall include \$2 PUM for costs attributable to information technology. For all PHAs, this fee will be based on the total number of ACC units.

G. Asset Repositioning Fee (ARF)

- i. PHAs must follow the requirements in 24 CFR 990.190(h) and PIH Notice 2011-18. PHAs must ensure that PIC data is accurate and ties to the ARF calculation, including days to relocation in the Demo/Dispo module, and the End of Participation (EOP) of the first move out after the relocation date. PHAs should work with their FO to make any needed corrections. Modifications to the Demo/Dispo module may only be done in conformance with PIH Notice 2011-18 (HA).
- ii. Section 3, Line 14 of the HUD-52723 will be prepopulated with ARF eligibility calculated based upon PIC data. However, PHAs must revise the prepopulated ARF eligibility amount if it is inaccurate and may only do so in conformance with PIH Notice 2011-18 (HA). FO will review PHA's calculation of ARF (and provide feedback and/or correction if needed).
- iii. When a unit becomes eligible for ARF, it is no longer eligible for other operating subsidy. Where a unit is eligible for ARF, PHAs must remove any unit months used to calculate ARF from Section 2 of the HUD-52723, except Column A, Line 12 as noted below. After ARF eligibility ends, if the units have not yet been removed from the ACC, they must be reported in Column A, Line 13. The ARF unit months reported on Lines 12 and/or 13 may be different than those used to calculate ARF eligibility as reflected in Section 3, Part A, Line 14. This is because unit months used to calculate ARF eligibility are not required to be on the ACC, and only ACC units are included in Section 2.
- iv. PHAs shall submit supporting documentation detailing the ARF calculation for the requested amount. Supporting documentation must include:
 - The project number and Demo/Dispo Application (DDAP) number;
 - A copy of the letter approving the demo/dispo application or homeownership plan (whichever is applicable) and any amendments thereto; and
 - A spreadsheet showing the ARF eligibility calculation and related information, including:
 - The date of the approval letter
 - For non-homeownership: number of days to relocation after the approval letter is issued, and the resulting relocation date (as defined in Notice PIH 2011-18); For homeownership: the disposition date
 - For non-homeownership, the first move out after the relocation date (must be consistent with the EOP in IMS/PIC), or a statement that all

units were vacant on the date of the approval letter or on the relocation date.

- The ARF unit months for the project or building(s) (this equals the number of ARF eligible months multiplied by the number of ARF eligible units)
- The detailed calculation of ARF funding for each year of eligibility, including ARF unit months, the PEL and the PEL inflation factor

The FO will validate that all data presented by the PHA as required in this section is consistent with IMS/PIC data.

- v. Requests that do not include all of the items listed above and any other items requested by the FO will not be eligible for the ARF subsidy, and may not be eligible for Operating Subsidy. Per 24 CFR 990.155, PHAs shall periodically revise their HUD-52723 submissions to reflect changes in eligibility based upon the removal of units. This should be done on a quarterly basis to capture changes in ARF eligibility.

H. Utilities Expense Level (UEL) and Central Office Cost Center (COCC)

The UEL is a product of the utility rate multiplied by the payable consumption level multiplied by the utilities inflation factor expressed as a PUM dollar amount. COCC utility consumption and costs are not included in the calculation of the PHA's project UEL on 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) in Section 10 of HUD-52722.

HUD-52722 is available on the CY 2017 Operating Subsidy Web page at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/of/opfnd2017

Special guidance for excluding COCC utility consumption and costs from combined consumption and costs in a pre-asset management Energy Performance Contract is on the Calendar Year 2017 Subsidy Processing web page:

<http://portal.hud.gov/hudportal/documents/huddoc?id=epc-cocc.pdf>

PHAs are reminded that if they dispose or demolish projects or entire buildings within a project they shall exclude all data by utility (rate, consumption, rolling base, eligible unit months, etc.) for these projects or buildings. The PHA also shall make an adjustment to the rolling base and provide HUD with additional details (i.e., amounts, calculation and methodology) regarding this adjustment (in the remarks section of HUD-52722 or as a separate attachment). PHAs that are

permanently disposing or demolishing units equal to or more than 10% of the total units within a building shall also follow the instructions above as they relate to the utility information regarding these units. Detailed instructions on how to accomplish this can be found on the Word version of the HUD-52722, available via HUDCLIPS or the Op Sub Web page at the above link.

The UEL on Line 26 of the HUD-52722 must be used to populate Section 3, Part A, Line 5 of the HUD-52723. In addition, Section 2 Column B, Lines 04, 15, and 17 of the HUD-52723 must be used to calculate Line 25 of the HUD-52722. Funding may be suspended for projects where the two forms are not consistent with each other. Also, Notice PIH 2014-18 (HA) has more information on Rate Reduction Incentives.

I. Elderly/Disabled Service Coordinator Program

For CY 2017, the public housing share of the reasonable cost of salary, fringe benefits and administrative costs for the Elderly/Disabled Service Coordinator (EDSC) program is eligible for operating subsidies. Only PHAs previously receiving EDSC funding (not Resident Opportunities and Self-Sufficiency [ROSS] funding for service coordinators that serve elderly/disabled residents) are eligible. Eligibility may be confirmed on the Calendar Year 2016 Operating Subsidy Processing web page.

Total EDSC eligibility may only increase annually up to the amount of the annual inflation factor on HUD-52723, Section 3, Part A, Line 02. Eligible PHAs may enter the eligibility amount for the EDSC program on HUD-52723, Section 3, Part A, Line 07. This "Self-sufficiency" line is restricted to the EDSC program and does not include ROSS funding.

J. Family Self-Sufficiency (FSS) Program

The FSS program enables families assisted through the Housing Choice Voucher (HCV) and Public Housing (PH) programs to increase their earned income and reduce their dependency on social services and rental subsidies. Under the FSS program, families living in assisted housing are provided opportunities for education, job training counseling and other forms of social service assistance (so that they can develop the necessary skills required to achieve self-sufficiency). Also, escrow accounts are established for participants by the PHA. As a participant's skills increase, earnings will likely increase, resulting in an increase in the participant's rent. In such cases, the increase in rent is placed by the PHA into the escrow account. Provision of operating subsidy to the PHA for its FSS escrow payments is through an adjustment to formula income in the calculation of Operating Subsidy in HUD-52723. PHAs are to reduce their tenant rent portion of formula income (on the 52723) by the amount of their FSS escrow payments. PHAs must enter appropriate comments in the comment Section of HUD-52723 when FSS escrow adjustments are made.

K. Energy Loan Amortization for Energy Performance Contracts

Through an approved Energy Performance Contract, a PHA may qualify for operating subsidy for payments of principal and interest cost for energy conservation measures described in 24 CFR 990.185(a)(3). Pursuant to 24 CFR 990.185(a)(3), if a PHA qualifies for this incentive, it

may amortize the cost of the loan for the energy conservation measures and other direct costs related to the energy project during the term of the contract.

L. Funding for Resident Participation Activities

As stipulated in 24 CFR 990.190(e), each PHA's operating subsidy calculation shall include \$25 per occupied unit per year for resident participation activities, including but not limited to those described in 24 CFR 964. A unit is eligible to receive resident participation funding if it is occupied by a public housing resident or it is occupied by a non-assisted PHA employee, or a 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 will be adjusted accordingly.

M. Environmental Requirements

As noted in the Operating Subsidy rule at 24 CFR 990.116, the environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and the implementing regulations at 24 CFR parts 50 and 58 are applicable to the Operating Fund Program.

N. Moving-to-Work (MTW) PHAs

MTW PHAs with an alternative Operating Fund formula agreement shall submit Operating Subsidy forms in accordance with their MTW Agreement. Generally, this involves submitting one set of forms on a PHA-level basis. PHAs submitting one set of forms shall follow these instructions:

- (1) HUD-52723: Enter data in accordance with the MTW agreement, which generally would include entries for Sections 1; Section 3, Part C, Lines 01 and 04; and Part D, Lines 01 and 03.
- (2) HUD-52722: Enter data in accordance with the MTW agreement.
- (3) MTW PHAs with alternative Operating Fund formula agreements shall submit documentation showing and supporting the agreement's formula as an attachment to the HUD-52723 (which may include forms and unit months referenced in Attachment A of their MTW Agreement).

MTW PHAs not using an alternative Operating Fund formula will have their electronic form pre-populated the same as regular formula PHAs, and shall complete and submit all sections of the HUD-52723 and the HUD-52722 on a project-level basis in the same manner as regular formula PHAs.

7. Appeals

A. Types of Appeals

24 CFR 990.245 establishes five types of appeals:

- i. Streamlined appeal: This appeal requires the PHA to demonstrate a blatant and objective flaw in the application of a specific Operating Fund formula component. For example, a geographic coefficient is identified with Springfield, IL, when it should be Springfield, MA.
- ii. Appeal of formula income for economic hardship: This appeal is no longer applicable since the frozen formula income provisions of 24 CFR 990.195 expired at the end of 2009.
- iii. Appeal for specific local conditions: This appeal requires the PHA to demonstrate that the model-generated PELs fail to reflect specific local conditions. To be eligible, the affected PHA must demonstrate, by means of 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.
- iv. 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 located in an area suffering economic dislocations may experience extreme population loss leading to a shortage of applicants, even with aggressive marketing and outreach.
- v. Appeal to substitute actual project cost data: A PHA may appeal PELs based on actual project cost data under an asset management period of at least two years as outlined in 24 CFR Part 990, Subpart H – Asset Management. 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 Assistant Secretary, Director of the Public Housing Financial Management Division, their respective FO Director, or other PIH staff, if appropriate, regarding any issues or concerns regarding notice implementation and operating subsidy eligibility.

B. Appeal Requirements

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 (PIH), however, has the discretion to accept appeals of 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, and any appeals that address single projects and not the entire portfolio will be denied.

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, taking into account its Operating Subsidy formula eligibility. The assessor must have appropriate knowledge of multifamily operating costs within the local market. The independent cost assessment should include:

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

Additionally, the PHA should include a table that presents the recommended unit-weighted average PEL for the entire public housing portfolio as compared with the unit-weighted average PEL assigned by HUD.

- iv. For “actual project cost data” appeals the PHA must also submit actual project cost data derived from actual asset management as outlined in 24 CFR subpart H for a period of at least two years.

C. Appeal Processing Requirements for CY 2017

PHA appeals for “changing market conditions” are to be submitted to the appropriate FO along with the PHA’s original operating subsidy submission for CY 2017.

For “streamlined” appeals, the PHA must describe the flaw and submit supporting documentation. For “local conditions” and “actual project cost data” appeals, the PHA must include the independent cost assessment with its submission. “Streamlined,” “local conditions,” and “actual project cost data” appeals must be sent by email to William.G.Jones@hud.gov and Kevin.J.Gallagher@hud.gov with the subject line “Appeal under 24 CFR 990.245.” Appeals must be sent at the same time that the PHA’s original operating subsidy submission for CY 2017 is sent to the appropriate FO. The PHA also must provide a copy of the appeal to the Public Housing Director of the FO, and the appropriate Financial Analyst at the FO.

Final appeal decisions will be issued prior to the revisions deadline. If an appeal is granted, HUD will adjust the PHA’s subsidy tool by the appropriate amount, which will be retroactive to the beginning of the year. The PHA must then submit the revised Operating Subsidy tool the Field Office by the revisions deadline.

9. Rental Assistance Demonstration (RAD)

(a) Funding

For units that convert pursuant to RAD, for the remainder of the first Calendar Year in which a Housing Assistance Payment (HAP) contract is effective (i.e., the “Initial Year”), Operating Funds will be obligated to the PHA for the Covered Project based upon the Operating Subsidy eligibility calculated as it normally is, without regard to the converted units.^[1] PHAs must submit Excel Tools and follow the normal Operating Subsidy process (including revisions where corrections are needed) for the project for the Calendar Year in which the HAP contract is effective (HAP effective date). In the year after the HAP effective date, the converted units shall not receive any further OpSub.

Projects with HAP effective dates in 2016 (or before):

- If the project fully converted to RAD, the project is not eligible for 2017 Operating Subsidy.
- For a fully converted project, if the conversion happens early in the year prior to the funding year, HUD will not deploy a tool for the project. However, if the conversion happens late in the year, HUD may deploy a tool for the project. For such late full conversions, the PHA should not submit the tool if the project has converted. If the PHA does submit a tool, and the project is funded in the year after the HAP effective date, the PHA should not draw down funds and should notify their FO that the project should not be funded.
- For partially converted projects, the PHA and FO must ensure that no eligible unit months (EUMs) for units that converted to RAD are included in the OpSub tools. For projects that close earlier in the year prior to the funding year, HUD will

^[1] 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 public housing Operating Subsidy for the Converted Project for the balance of the Calendar Year.

- remove EUMs from the RAD units from Section 2 of the HUD-52723. However, in all instances, the FO and PHA must ensure that the EUMs are removed.
- For partial conversions, the rolling base should be adjusted. Please see the instructions to the HUD-52722 (available on the 2017 OpSub processing web page, and via HUDCLIPS) for details on adjusting the rolling base.

After the HAP effective date, Operating Fund obligations to closed projects will be moved into specific RAD Budget Line Items (BLIs) in LOCCS. The amount of Operating Funds that can be used for HAP payments during this Initial Year (the Calendar Year of the HAP effective date) is capped at HUD's obligations of Operating Subsidy to the project for the remainder of the year of conversion, pro-rated by the portion of units in the PIC Development that are converting, and will be removed from PIC. Commencing on the effective date of the HAP contract, the PHA may use no more than the amounts described above to make HAP payments in the Initial Year.

(b) Designation of Units Converting to RAD as Vacant for Modernization

Units in a project with a commitment to execute a HAP [CHAP] approval, which the PHA plans to modernize and are vacant because a PHA has not reoccupied them in preparation for modernization pursuant to a for RAD conversion, can be considered as "Units Undergoing Modernization," provided they comply 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 FO, and the unit status correctly reflected in PIC. Furthermore, the RAD conversion and planned modernization must be in: (i) A HUD approved PHA Annual Plan for non-qualified PHAs (24 CFR 903); (ii) 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 (iii) a HUD approved Capital Fund Plan (24 CFR 905.300) if Capital Funds are also being used for modernization. Units converting to RAD that will not be modernized are not eligible to be categorized as Units Undergoing Modernization.

10. Turnkey III Projects

HUD-53087 form requests are accepted only for projects transitioning out of the Turnkey III (HTK) Program, and where supporting documentation has been provided including ACC and active lease purchase agreements. 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 (Turnkey III may still have a remaining term)?

If there is no effective contract with the residents and the PHA is under the Faircloth limit, the PHA may apply under the Part 905 acquisition development method to make these properties public housing rental units. These units will otherwise be ineligible for Operating Fund program

funding as Turnkey III units. Once the units are transitioned to regular public housing units, the PHA should insure that these units' PIC program type is changed to "Low Rent."

11. 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 Funds 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 ACC units, consolidations, and RAD removals. PHAs will not be funded for those units that exceed the posted Faircloth limit, and are responsible for reviewing the Faircloth limits and notifying HUD if they believe their posted Faircloth Limit is in error.

The Faircloth Limit is maintained by PIH's Capital Program Division, as further described in PIH Notice 2011-69. Because the Operating Fund is calculated on an Eligible Unit Month 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 web page. Where the sum of unit months (HUD-52723 Section 2, Column A, Line 15 minus Line 4) for all of a PHA's projects exceeds the Faircloth Unit Month Limit, the excess units must be removed from the PHA's Form 52723.

In the absence of a PIC ticket, which corrects for 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, HUD-52723, beginning with the newest project added to inventory. If the total number of unit months in the newest 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. An exception to this approach are PHAs that have projects that have units in Line 13. In such instances, Line 13 may be reduced first, even if the unit months are in a project that is not the newest project. In addition, if a PIC ticket exists that corrects for the Faircloth violation, the correct unit status in HUD-52723 should be updated to align with PIC.

The Faircloth Limit dictates the amount of funding for PHA units for a given Calendar Year of Operating Subsidy. Therefore, for existing units the timeframe spans twelve months, January to December. For New Projects, the timeframe is extended to include the months October, November, and December of the prior year. Those three additional months of funding appear on Line 4 of HUD-52723 and are eligible for funding. For new projects, HUD-52723 submissions will be reviewed to determine if the new units cause the PHA to exceed the Faircloth Unit Month Limit, and adjustments will be made by the FO accordingly. One possible adjustment is the subtraction of Line 4A from Line 15A and then multiplying the difference by 12 to establish a ceiling for funding of unit months.

It is important to note that appropriate adjustments need to be made to Form 52722 whenever units for Faircloth are being reduced off the HUD-52723. At a minimum, the EUMs on the HUD-52722 will need to be updated accordingly.

12. PHA Board Resolution

The PHA Board Resolution (HUD Form 52574) approving the PHA's operating budget must be submitted to the appropriate FO prior to the beginning of the PHA's fiscal year. 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).

13. HUD Approval of Calculations

HUD will post on the Calendar Year 2017 Operating Subsidy Processing web page an explanation of its funding methodology and the obligation letters for each set of interim months funded. Based on the FFY 2017 Appropriations Act, PHA operating subsidy eligibility submissions, and FO reviews, HUD will determine and approve final operating subsidy levels for CY 2017. Final subsidy levels for PHAs will be posted on the same web page.

14. Penalty for False Claims and Statements

HUD will prosecute false claims and statements. Such false statements and/or entries may be subject to criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

15. Further Information

All questions from PHAs are to be referred to the appropriate FO.

16. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget 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.

/s/

Lourdes Castro Ramírez
Principal Deputy Assistant Secretary
for Public and Indian Housing