



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

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<b>Special Attention of:</b> Public Housing Agencies Public Housing Hub Office Directors Public Housing Program Center Directors Regional Directors Field Office Directors Resident Management Corporations	<b>Notice</b> PIH 2011-055  Issued: September 26, 2011  Expires: December 31, 2012
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Cross Reference: 2011-048

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**Subject:** Public Housing Operating Subsidy Calculations for Calendar Year 2012

This is a revised version of PIH Notice 2011-55, dated 09/26/2011. The previously posted document should no longer be used.

This Notice has been revised to provide technical corrections to the following subsections:

- Section 9 “Subsidy Allocation Adjustment”, Subsection C, “Requests for Exclusions”
- Section 9 “Subsidy Allocation Adjustment”, Subsection E(2)(c), “Specific Required Documents”

Please read this Notice carefully so that you are familiar with the content.

## **1. Purpose**

This notice provides public housing agencies (PHAs) with instructions for operating subsidy calculation submissions in Calendar Year (CY) 2012 as funded from Federal Fiscal Year (FFY) 2012 appropriations. It also informs PHAs that in an effort to reduce their reporting burdens HUD will use information in its systems of record to determine operating subsidy eligibility. HUD is committed to providing eligibility information to PHAs prior to the start of CY2012.

This notice also addresses the allocation adjustment to operating subsidy proposed in the President’s FFY 2012 budget, the methodology for the adjustment, the allowable requests for exclusion from the reserve calculation, and the submission and processing of allowable reserve exclusion requests. Although this adjustment has not yet been enacted by Congress, HUD is providing PHAs with this information and the procedures for implementation so that PHAs are able to plan accordingly. As explained further in this Notice, any allocation adjustment to the operating subsidy is subject to the language in the FFY 2012 Appropriations Act.

## **2. Background**

HUD provides operating subsidies for public housing at the project level on a calendar year basis. Separate operating subsidy calculation forms (see 4.A. below) must be submitted for each project identified under asset management pursuant to 24 CFR § 990.265. PHAs that own and operate fewer than 250 units and treat their entire portfolio as a single project for asset management purposes pursuant to 24 CFR § 990.260(b), but the units are grouped into more than one project, shall submit separate operating subsidy calculation forms for each project in the Inventory Management System PIH Information Center (IMS/PIC).

In FFYs 2008, 2009, 2010 and 2011, Congress provided an exemption from asset management for PHAs with between 250-400 units. If this exemption is removed in the FFY 2012 appropriations, appropriate instructions will be provided for data entry in the Excel Tool (see 4.B. below) that will be posted on the Calendar Year 2012 Subsidy Processing web page at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/am/of/opfnd2012](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/of/opfnd2012)

### **3. Initial Obligation of CY 2012 Operating Subsidy**

HUD will deploy the CY 2012 Excel Tools (see 4.B.) no later than September 30, 2011. The PHA must submit its completed CY 2012 Excel Tools to the reviewing Field Office no later than October 31, 2011. HUD plans to notify PHAs of eligibility and subsidy allocation adjustment amounts by December 15, 2011. The initial obligation of operating subsidy funding for CY 2012 may be based on estimates depending on the date HUD's FFY 2012 Appropriations Act is enacted. Details of the methodology for the estimates and information on the subsidy allocation adjustment will be posted on the Calendar Year 2012 Subsidy Processing web page. Please check this page periodically.

### **4. General Operating Subsidy Submission Processing for CY 2012**

#### **A. Required Operating Subsidy Submission Forms**

To determine operating subsidy eligibility under the operating fund formula, PHAs must complete and submit the following two forms for each project:

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

PHAs must also submit/certify the following forms/documentation:

- Form SF-424, Application for Federal Assistance, required as part of the government-wide *e-grants* management initiative (refer to the Calendar Year 2012 Subsidy Processing web page for guidance on completion of this form). Submit only one form for each PHA. PHAs should send an email to the

appropriate local field office with the scanned document attached; however, they may send it by fax with field office approval.

- PHAs must have a Dun and Bradstreet Universal Identifier Numbering System (DUNS) number as well as active registration in the Central Contractor Registration (CCR) to receive funds from HUD's financial systems. If a PHA does not have a DUNS number, the Calendar Year 2012 Subsidy Processing web page provides directions on how to receive one.
- Form HUD-50071, Certification of Payments to Influence Federal Transactions
- Supporting documentation, as needed and requested by the local field office

#### **B. Submission Process**

No later than October 31, 2011, PHAs shall submit forms HUD-52723 and HUD-52722 electronically for each project to their local HUD field office using the Excel Tools. CY 2012 Excel Tools, instructions for completing and the Tools and other required forms, and the schedule for PHA data entry will be posted on the Calendar Year 2012 Subsidy Processing web page. PHAs will be notified through their field offices when these instructions are posted to the web page. Failure to meet the submission deadline will be interpreted as a rejection of the grant (operating subsidy) by the PHA.

Nothing in this Notice impacts HUD's ability to work with PHAs in correcting and ensuring the accuracy of all submissions.

#### **C. Pre-populated Data**

To reduce PHA reporting burden and in accordance with 24 CFR 990.135(b)(2), information submitted by PHAs to HUD's systems of record (including but not limited to FASS and IMS/PIC) will be used to pre-populate the CY 2012 Excel Tools.

Unit status and other data for the reporting period of July 1, 2010, through June 30, 2011, were extracted from IMS/PIC in September 2011, and summarized at the project level in the CY 2012 Excel Tools. For CY 2012, if the pre-populated data is incorrect, entries may be edited by either the PHA or the Field Office as shown in Table 1 below. PHAs must adhere to the requirements of Notice 2011-7, including all applicable HUD approvals, when changing Unit Months categorization data on the form HUD-52723 Excel Tool.

**Table 1: CY2012 Pre-populated Formula Data**

<b>Item Description</b>	<b>PHA Can Edit</b>	<b>Field Office Can Edit</b>
Project Number	No	No
Name of PHA	No	No
Address of PHA	No	No

Item Description	PHA Can Edit	Field Office Can Edit
ACC Number	Yes	Yes
DUNS Number	Yes	Yes
Total number of ACC units for the PHA	Yes (edits allowed with comment)	Yes (may edit with comment)
Section 2, Categorization of Unit Months	Yes (edits allowed with comment)	Yes (may edit with comment)
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
PUM formula income	Yes	Yes
Transition funding	No	No

A requested change of more than 3% from the pre-populated value in Total Unit Months, Section 2, Column B, Line 15, of the HUD-52723 will require an explanation in the Excel Tool and the attachment of appropriate supporting documentation. This documentation must include, at a minimum, a PIH-REAC Technical Assistance Center (TAC) ticket number and copies of relevant communications with Field Office personnel.

PHAs that request an adjustment to the pre-populated data may also be required to submit a plan for correcting the IMS/PIC data discrepancies.

##### **5. CY 2013 Guidance on IMS/PIC Development Sub-Module Reporting and Validation**

Beginning with CY 2013, and for all CYs thereafter, HUD intends to use data from HUD source systems to determine operating subsidy eligibility. Because this information will not be editable beginning with the CY 2013 Excel Tools, it is imperative that PHAs timely and accurately update all information in HUD source systems.

For CY 2013, HUD intends that Section 2 of the HUD-52723, "Categorization of Unit Months," will not be editable by PHAs in the HUD 52723 form Excel Tools.

PHAs are reminded that Notices 2010-25 and 2011-7 require PHAs to successfully submit all changes to the status of units to IMS/PIC within 60 days of the effective date of the action. Attempting to enter changes to unit statuses with overlapping effective dates may result in an error. HUD, therefore, strongly encourages PHAs to submit changes to the status of units as soon as possible after the effective date of the action and to verify monthly that the statuses of all units are correctly reflected in IMS/PIC.

For CY 2013 funding, PHAs should be aware that any changes to Unit Months made later than 60 days from the end of the operating subsidy reporting period will only result in an adjustment to the subsidy calculation if the PHA can demonstrate:

1. The cause of the data discrepancy was outside the control of the PHA,
2. The PHA made timely efforts to resolve the discrepancy, and
3. The PHA has supporting documentation in the form of a REAC TAC ticket number and, as applicable, a HUD approval letter for HUD approved status categories

PHAs experiencing issues with IMS/PIC or other PIH systems should promptly contact their local Field Office or the PIH-REAC Technical Assistance Center (TAC) at 1-888-245-4860.

### **Revisions to CY2012 Operating Subsidy Eligibility**

PHAs may request revisions to their original CY 2012 operating subsidy submissions. To allow sufficient time for field office review and inclusion of any resulting changes to eligibility in the final CY 2012 operating subsidy eligibility prior to the end of FFY 2012, all revision requests must be submitted to the appropriate field office **no later than Friday, July 13, 2012**. The grounds on which a PHA may request revisions to operating subsidy eligibility are:

- Correction of mathematical, clerical and information system errors;
- New projects/units (24 CFR 990.155);
- Demolition and disposition of units (24 CFR 990.155);
- New utilities incentives/contracts (24 CFR 990.185);
- Appeals granted by HUD (24 CFR 990.245) ; or
- Corrections to categorization of unit months for the reporting period.

Guidance on funding of new projects/units (i.e., added after the reporting period) is on the Calendar Year 2012 Subsidy Processing web page.

### **7. Other Operating Subsidy Calculation Information**

- **Appeals.**
  - **PHA Streamlined Appeals, Appeals for Specific Local Conditions and Appeals to Substitute Actual Project Cost Data.** Refer to Attachment A to this Notice for instructions.
  - **PHA Appeals for Changing Market Conditions.** PHA appeals for CY 2012 due to changing market conditions **must** be sent to the appropriate field office concurrently with original submissions of operating subsidy eligibility. Refer to the Attachment to this Notice and to PHA Guidance for Appeals for Changing Market Conditions on the Asset Management website for further instructions.

- **Project Expense Levels (PELs).** PELs for CY 2012 are calculated by inflating the final CY 2011 PELs using the local inflation factors. PELs are based on the project characteristics for July 2010. If there have been significant changes to project characteristics or project regroupings between July 2010 and July 2011, PHAs may contact the appropriate field office with any questions or concerns.

For information regarding adjustments to PELs for mixed-finance project audit costs, refer to Audit Cost Guidance for Mixed-Finance Projects on the Calendar Year 2012 Subsidy Processing web page.

- **Formula Income.** PUM formula income will be pre-populated based on PHAs' most recent audited or approved financial statements.

Special guidance for capturing the resident-paid utilities incentive on Form HUD-52723, Section 3, Part B, Line 01, is on the Calendar Year 2012 Subsidy Processing web page.

Section 3, Part B, Line 02, PUM change in utility allowance will be locked for data entry. It has been obsolete since the "unfreezing" of formula income at the end of CY 2009.

- **Cost of Independent Audit.** Project audit costs will be pre-populated in the Excel Tool. Amounts reflect the most recently approved, audited Financial Assessment Subsystem – Public Housing (FASS-PH) Financial Data System (FDS) submissions. If a project's most recent actual audit cost is higher or lower than the amount pre-populated, include proof of payment with the CY 2012 submission. Independent audit costs are restricted to their share of audit costs associated with of the operating fund program and not costs related to non-public housing units in mixed-finance projects.
- **Payments in Lieu of Taxes (PILOT).** Project PILOT amounts will be pre-populated in the HUD-52723 Excel Tool. Amounts reflect the most recently approved FASS-PH FDS submissions. Alternatively, the PHA may enter a project's most recent actual PILOT amount and attach proof of payment to the CY 2012 submission.
- **Asset Management Fee.**
  - PHAs with 250 or more units (400 or more units under the asset management exemption appropriations provisions) must comply with asset management requirements under 24 CFR 990.255 through 990.290, Subpart H -- Asset Management, which includes the requirement to comply with all components of asset management by FFY 2011. Form HUD-52574, PHA Board Resolution, includes a certification that all statutory and regulatory requirements have been met. PHAs not in compliance will forfeit the asset management fee in accordance with 24 CFR 990.190(f). In determining compliance with asset management, Field Offices will review the PHA's most recent financial submission and other relevant material.

- In general, for PHAs 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).
- If a PHA has opted out of asset management, it must continue to request operating subsidy *for each project shown* in PIC (i.e., not all projects combined into one) as of the end the reporting period (June 30, 2011).
- **Asset Repositioning Fee (ARF).**
  - PHAs must follow 24 CFR 990.190(h) regulatory requirements *and the provisions* of Notice PIH 2011-18, Guidance on the Asset-Repositioning Fee under 24 CFR 990.190(h) and Guidance on Re-occupying Public Housing Units Proposed or Approved for Demolition, Disposition, or Transition to Homeownership.
  - PHAs shall submit supporting documentation detailing the ARF calculation of the requested amount. At a minimum, supporting documentation will include a spreadsheet indicating the project number and ARF start date for projects, buildings and unit months as well as the percentage of the PEL associated with those projects, buildings and unit months. Field Offices may request other relevant information as necessary.
  - PHAs' form HUD-52723 submissions must include the number of unit months associated with the ARF on Section 2, Line 12, of the form.
  - ARF requests missing the above items will not be eligible for subsidy.
- **UEL and Central Office Cost Center (COCC).** COCC utility consumption and costs are not included in the calculation of the PHA's/project's 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 shall explain the methodology used to calculate the excluded COCC data (e.g., square footage) in Section 10, Remarks, of the form.
 

Special guidance for excluding (breaking out) COCC utility consumption and costs from combined consumption and costs in a pre-asset management Energy Performance Contract is on the Calendar Year 2012 Subsidy Processing web page.
- **Elderly/Disabled Service Coordinator Program.** For CY 2012, 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) – Elderly and Persons with Disabilities funding) are

eligible. Confirm eligibility as posted on the Calendar Year 2012 Subsidy Processing web page.

Funding based on prior EDSC levels includes an annual inflation factor no greater than the local inflation factor on Form HUD-52723, Section 3, Part A, Line 02. Enter the subsidy amount for the EDSC program on Form HUD-52723, Section 3, Part A, Line 07, "Self-sufficiency" Add-On. Part A, Line 07, "Self-sufficiency" is restricted to the EDSC program and does not include ROSS funding.

- **Moving-to-Work (MTW) PHAs.**

MTW PHAs with an alternative operating fund formula agreement shall submit one calculation via the following forms:

- HUD-52723: Section 1; Section 2, Annual Contributions Contract (ACC) units; Section 3, Part C, Lines 01 and 04; and Part D, Lines 01 and 03; and,
- HUD-52722: in accordance with their MTW agreement.
- 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 shall complete and submit all sections of the Form HUD-52723 and the Form HUD-52722 on a project-level basis using the Excel Tools as described in this Notice.

## **8. Mutual Help and Turnkey III Projects**

PHAs with a Mutual Help or Turnkey III project(s) requesting operating subsidy for these project(s) must complete and submit **Form HUD-53087**, Calculation of Subsidies for Operations: Non-Rental Housing. The operating subsidy provided to a Mutual Help or Turnkey III project is partially based on the project's operating budget. PHAs requesting operating subsidy for Mutual Help and Turnkey III projects must complete the CY 2012 Form HUD-53087 based on the appropriate line items from the latest approved operating budget at the time of the CY 2012 submission and send to the appropriate field office.

## **9. Subsidy Allocation Adjustment**

### **A. Description**

The President's 2012 budget contains language that if included in the HUD 2012 Appropriations Act would require HUD to take into account PHA operating reserves in the calculation of PHA operating subsidy. This process is referred to as the "Subsidy Allocation Adjustment." Because of the timing and due dates of the Excel Tools, in this Notice HUD is



describing the adjustment allocation determination procedures and the process by which PHAs may request that certain amounts be excluded from their calculated operating reserve balances in the event that HUD's Appropriations Act includes this language.

After HUD determines the 2012 operating fund eligibility for each PHA project, HUD will make an allocation adjustment, as applicable, to the PHA's eligibility. This adjustment will be expressed as a percentage (0% - 100%) and will be based on the amount of the PHA's operating reserves above the minimum level established, as described below. See Attachment B that provides examples at the PHA level of allocation adjustments determined in accordance with the process described in this Notice.

Operating reserves means the amount of current assets that are available after liquidating any liability that is due within the next year (current liability). (See Table 2 below for how this amount is calculated from the PHA's FDS.) For most PHAs operating reserves is the accumulation of funds that includes but is not limited to:

- unspent operating subsidy, including ARF;
- unspent tenant rent;
- other miscellaneous revenue, including program income that has expanded uses (e.g., non-rental income from vending machines, cell tower leases, energy savings from energy performance contracts); and
- unrestricted, unspent insurance proceeds (i.e., when insurance proceeds are in excess of the actual cost to repair the property or the PHA received written HUD approval to retain the insurance proceeds in lieu of repairing the units and the property is approved by HUD for demolition or disposition).

HUD will determine the amount of a PHA's operating reserves from the projects in the Financial Data Schedule (FDS) which would exclude information from the Central Office Cost Center (COCC) and any other programs. Amounts of operating reserves above the amount needed to cover four months of operating expenses for PHAs with 250 or more public housing units and six months of operating expenses for PHAs with 249 or less public housing units will be used to determine the allocation adjustment unless FFY 2012 Appropriations language specifies a different amount. The PHA's final operating expense will be determined from the CY 2012 HUD Form 52723 – Calculation of Operating Subsidy.

**Table 2: FDS Line Numbers and Descriptions Used in Calculating Operating Reserves**

#	FDS Line No.	Line Description
1	111	Cash - Unrestricted
2	114	Cash – Tenant Security Deposits

#	FDS Line No.	Line Description
3	120	Total Receivables
4	131	Investments - Unrestricted
5	142	Prepaid Expenses and Other Assets
6	144	Inter-program – Due From
7	145	Assets Held for sale
8		Total of Lines 1 through 7
9	310	Total Current Liabilities
10	343	Current Portion of Long term Debt – Capital Projects*
11		Line 9 Minus Line 10
12		Operating Reserves (Line 8 minus Line 11)

- \* Line 343 is defined in the FASS-PH FDS Line Definition Guide as follows: “This line item includes the current portion of bonds & notes, which were used for capital financing, as well as capital leases, and mortgage revenue bonds.” For the public housing program for this line item and time frame line 343 is typically used for debt associated with the Capital Fund Financing Program and Energy Performance Contracts. This line item is excluded from the operating reserve calculation because the current liability will not be paid from operating reserves but from subsequent Capital Fund grant revenue and energy savings.

## B. Subsidy Allocation Adjustment Determination Methodology

HUD will calculate the operating reserves for each PHA based on the PHA’s financial submission for the following FYE dates:

- June 30, 2010
- September 30, 2010
- December 31, 2010
- March 31, 2011

The information to calculate the reserves will be taken from the PHA’s approved audited financial submissions as of the date shown above. If the approved audited financial submission is not available, HUD will use the approved unaudited data. If no approved data

exists for the PHA or the audited submission contains a disclaimer or adverse opinion, the PHA operating subsidy allocation adjustment will be based on the greater of the most recent approved submission or the average amount of the eligibility reduction for the PHA's peer group. See Table 3 below for the peer groupings. Finally, for PHAs whose financial submission will be invalidated as a result of the allowable exclusion adjustment process as described below, HUD will use the revised financial information that the PHA provides with its request for the exclusion. In these cases, if the PHA fails to resubmit the FDS within 30 days of the date HUD notifies the PHA that the original submission must be invalidated, or the corrected resubmission cannot be approved due to other errors, the exclusion will be reversed and the operating reserve calculation from the original FDS will be used.

**Table 3: PHA Peer Groupings**

<b>PHA Size Group (Units)</b>
Extra Large (10,000+)
Large (1,250 - 9,999)
High Medium (500 - 1,249)
Low Medium (250 - 499)
Small (50 - 249)
Very Small (1 - 49)

To assist PHAs in understanding the subsidy allocation adjustment and provide the information based on the most recent financial data, the current estimate of each PHA's anticipated subsidy allocation adjustment will be available on the Calendar Year 2012 Subsidy Processing website at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/am/of/opfnd2012](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/am/of/opfnd2012)

By entering the PHA's 5 digit alpha-numeric code on the subsidy allocation adjustment spreadsheet each PHA will be able to view the amount of its reserves and any corresponding adjustment to its anticipated funding level for CY 2012. The amounts provided on the website are not the final 2012 subsidy allocation adjustments and are subject to change in whole or in part. They are estimates and are provided to serve as a guide for the PHA in its budget process as well as in its determination of whether or not to request an exclusion as outlined in subsection 9.C. Requests for Exclusion, below in this Notice.

### C. Requests for Exclusions

Subject to HUD's FFY 2012 Appropriations Act restrictions and any subsequent guidance, PHAs may request to exclude a portion of their reserves from HUD's subsidy allocation adjustment calculation. All requests for exclusions must be submitted electronically no later than October 31, 2011, to **2012allocationadjustments@hud.gov** with the subject line "**Exclusion Request 2012 Allocation Adjustment [PHA Code]**." PHAs are encouraged to submit requests for exclusions prior to the October 31, 2011 deadline. HUD will acknowledge receipt of all exclusion requests by email. Upon completion of its review, HUD will notify the PHA by email of its decision, including, if applicable, any adjustment to the amount of the PHA's operating reserves. Any approved reserve exclusion will be reflected in the final eligibility determination. All determinations are made by the Assistant Secretary of Public and Indian Housing or her designee and are final.

PHAs may submit a request to exclude a portion of their reserves only on one or more of the following grounds:

- 1) Corrections to the FDS that would impact the allocation adjustment calculation (e.g., unspent insurance proceeds or funds received as a result of a disaster that the PHA incorrectly reported as unrestricted);
- 2) Obligations/commitments of operating reserves entered into no later than March 31, 2011; and
- 3) Other specific circumstances such as contingent liabilities (FASB 5), the repayment of ineligible costs, penalties on liquidating long term investments, and funds held for self-insurance.

In addition to a request for exclusion being on one of the above described grounds, to timely and efficiently address industry concerns regarding exclusion requests HUD will only consider exclusion requests that cumulatively will have a material impact on a PHA's final allocation adjustment. An exclusion request having a material impact would be a request for an amount which if granted would be for more than one half of one month of a PHA's operating expenses.

For some PHAs, regardless of the amount of the exclusion, there will be no impact on their final operating subsidy eligibility. Therefore, in certain circumstances HUD will not consider requests for exclusions. PHAs should review these circumstances and consider their CY 2012 operating subsidy calculations when determining whether to submit a request for an exclusion. HUD will **NOT** consider requests for exclusions:

- 1) When the PHA is operating under an MTW Agreement. For all MTW PHAs, HUD will apply a proration to their subsidy eligibility based on the average reduction of the PHAs peer group.
- 2) For a PHA with fewer than 250 units that has less than or equal to six months of operating expenses held in reserve or \$100,000, whichever is greater, as shown on the subsidy allocation adjustment spreadsheet.

- 3) For a PHA with 250 or more units that has less than or equal to four month of operating expenses held in reserve or \$100,000, whichever is greater , as shown on the subsidy allocation adjustment spreadsheet.
- 4) When the amount that is above the PHA’s minimum operating reserve level (line 4 in Table 4 below) is approximately two or more times greater than the PHA’s CY2012 operating subsidy eligibility (line 6 in Table 4 below). The approximately two or more time amounts is based on the best estimates available but will change as operating reserves, exclusions, and CY 2012 operating subsidy is finalized throughout this process.

**Table 4: Example**

#	Row Description	Definition	Amount (prior to exclusion)		Amount (after exclusion)	Effect of exclusion on calculation
1	Total Operating Reserves	Calculated from FDS	\$1,500,000	HUD Grants PHA Request for \$400,000 exclusion →	\$1,100,000	Operating Reserves are reduced by \$400,000 exclusion
2	Minimum Operating Reserve Level	Months Expenses (PEL+UEL+Add-on) - 4 if 250 or more units / 6 if less than 250 units	\$250,000		\$250,000	No effect
3	Operating Fund Eligibility	Calc. of Operating Subsidy	\$300,000		\$300,000	No effect
4	Amounts above Minimum Operating Reserve Level	Line 1 minus Line 2; if negative, then zero	\$1,250,000		\$850,000	Amounts above Minimum Operating Reserve Level are reduced by \$400,000 exclusion
5	Calculated Alloc. Adjustment	Reduction of Amounts above Minimum Operating Reserve Level (line 4 x HUD Factor)	\$575,000		\$391,000	Calculated Alloc. Adjustment reduced by \$184,000 (line 4 x HUD Factor)
6	Proposed Alloc. Adjustment*	Lesser of Line 3 or Line 5	\$300,000		\$300,000	No effect

\*Limited to an amount not to exceed one year of a PHA’s operating subsidy. The actual factor will be based on the 2012 Appropriations Act, if the subsidy allocation adjustment is included.

#### **D. Basic Required Documents**

HUD requires the following documents for all requests to exclude a portion of a PHA’s calculated operating reserves:

- 1) Indicate under which of the categories it is requesting the exclusion. PHAs can apply under more than one category provided they meet the requirements for that category;
- 2) State the specific dollar amount of the exclusion requested;
- 3) Provide a calculation of dollar amount of operating reserves that remains after the amount of the requested exclusion is deducted;
- 4) Provide succinctly all required documents necessary for HUD to make a determination on the exclusion request;
- 5) Describe the eligible operating fund activity/purpose for which the funds will be used or the capital activity;

- 6) Provide evidence that the request, if approved, will result in an exclusion of an amount that is greater than one half of one month of the PHA's operating expenses;
- 7) Provide evidence that the exclusion will reduce the amount that is above the PHA's minimum operating reserve level to an amount that is less than twice as much as the PHA's CY2012 operating fund eligibility; and
- 8) A signed certification statement by the PHA's Executive Director that the submitted material is accurate.

#### **E. Specific Required Documents**

In addition to the basic required documents listed in subparagraph 10.D. "Basic Required Documents, specific documents are required for each category of exclusion request.

**1) Category 1: Corrections to the FDS.** A PHA may request an exclusion from its calculated operating reserves for funds that are incorrectly reported on the FDS. The three most typical corrections to the FDS are described below, but HUD will also entertain other requests for exclusion for funds incorrectly reported on the FDS.

- a. Incorrect reporting of insurance proceeds. The ACC requires that insurance proceeds be used to restore, reconstruction and/or repair any damaged or destroyed property. A PHA may request an exclusion if it incorrectly reported insurance proceeds as unrestricted on the FDS but is in fact required to use those proceeds to repair the property.

The PHA must submit evidence of the total amount of the proceeds, the amount of proceeds used to restore, reconstruct or repair the damaged or destroyed property, information on how the PHA has accounted for the proceeds on the FDS, and any estimated costs of required repairs that have not yet been incurred.

- b. Disaster funds. Some PHAs received funds, or entered into agreements for additional "use" language, to repair their public housing units that were damaged in a federal, state or other declared disaster. Depending on the source of the funding or the program (i.e., Section 901), these assets should not have been reported in the FDS columns of the public housing projects or should have been reported as restricted (and therefore not included in the PHA's operating reserve calculation).

PHAs can request to correct their FDS if these funds are misreported (either in the wrong FDS line or in the wrong FDS program). When the agreement is no longer in effect and/or all or a portion of these unspent funds will not be used for repair of the units, these funds do not qualify for an exclusion and should be returned to the originating funding source and reported as such on the FDS.

The PHA must submit approved plans, agreements, and other related documents which show that the funds are still restricted for and will be used to repair or rebuild public units damaged by a disaster and authorization of the use of operating reserves

to fund the repairs. The PHA also needs to describe the type of disaster and the dates on which the damage occurred.

- c. Non-federal funds. Some PHAs may have received funds or grants from non-federal sources (e.g., state governments, local governments, non-profit organizations, etc.) and incorrectly reported those funds on their FDS in the public housing program. This may have occurred because the PHA intended to use those funds to support its public housing program. For those instances, when requesting the exclusion a PHA must submit evidence of the non-federal source, the unspent amount still being incorrectly included in the operating reserves and that the funds were improperly reported under the public housing program.
- d. Additional documents. For exclusion requests based on corrections to the FDS, the PHA must also submit:
  - A copy of the approved FDS that contains the error;
  - An indication of the corrected entries and financial information; and
  - A written concurrence from the PHA's auditor.

If the exclusion is granted, the PHA will have 30 days in which to resubmit a corrected FDS after HUD notifies the PHA of invalidation of the submission containing the error. If the PHA does not resubmit its corrected FDS or the submission cannot be approved due to other errors, HUD will reverse the approved allocation adjustment exclusion and the invalidation will be automatically removed. These requirements also apply to any other unique circumstances where operating reserves have been calculated erroneously due to misclassification of FDS line items.

2. **Category 2: Obligations/Commitments.** A PHA may request an exclusion for funds that are appropriately included in a PHA's calculated operating reserves and for which the PHA has a valid obligation or a commitment dated no later than March 31, 2011.

- a) Obligations. PHAs that entered into a valid contractual obligation dated not later than 3/31/2011, and can demonstrate either that the allocation adjustment will impact its ability to satisfy any remaining contractual obligation or that the contract has been paid in full from operating reserves, may request an exclusion. The amount of the exclusion request is limited to the reserves that have been or will be used to satisfy the outstanding obligation (remaining balance to be paid) after the FYE date HUD used to calculate the PHA's reserve balance. The PHA must submit all of the following:
  - A copy of the contract or equivalent obligating document;
  - A copy of the Board resolution approving the obligation, when required;
  - Evidence that these obligations have not been earmarked for payment by sources other than operating reserves;
  - For force account work, the project plan and evidence that the work commenced;

- A payment schedule showing what has been paid, the timing of those payments, and what is owed; and
- A pro forma income statement. For the purpose of this Notice a pro forma income statement means an income statement of the PHA's public housing activity from the PHA's FYE date that HUD used to calculate the allocation adjustment through 12/31/2012. The income statement should provide HUD enough detail to easily determine which revenues or expenses have been estimated and which are actual. The pro forma income statement should demonstrate that the proposed allocation adjustment will impact the PHA's ability to satisfy its future liabilities while maintaining the minimum level of operating reserves.

b) Examples of the types of contracts covered are:

- A contract entered into by a PHA with 300 units prior to 3/31/2011 for which amounts are due during CY 2012 and for which the PHA will have insufficient revenue or reserves to make the payments and maintain a four (4) month reserve balance.
- A contract entered into prior to 3/31/2011 and completed before 1/1/2012 for which the PHA used reserves to make all payments.

c) Commitments. PHAs that have commitments for certain amounts in operating reserves may request an exclusion. The instances when a PHA may request an exclusion for a commitment are:

- When the PHA's operating reserve balance includes proceeds from the disposition of public housing properties and those funds are committed for eligible activities under Section 18 of the United States Housing Act of 1937 but not yet obligated. The amount of the exclusion is limited to remaining disposition proceeds in reserves after the FYE date HUD used to calculate the PHA's reserve balance. In these cases, PHAs must submit:
  - A copy of the Special Applications Center (SAC) approval; and
  - Evidence of the actual amount of the sales proceeds; and
  - A copy of the relevant sections of the PHA's Annual Plan approved by HUD not later than March 31, 2011; or
  - Adequate documentation evidencing the commitment. For example:
    - Copies of Requests for Proposals (RFPs) issued; or
    - Approved grant applications; or
    - AHAP commitment; or
    - Memorandum of Understanding between the PHA and a supportive services provider.
- Notwithstanding the limitations above related to the proceeds from the disposition of public housing properties, for any disposition proceeds that



remain unspent and were received by a PHA in the two fiscal years prior to the fiscal year end HUD used to calculate the reserve balance, the PHA can request an exclusion. For an exclusion on this basis, the PHA must submit:

- A copy of the SAC approval; and
  - Evidence of the amount of the actual sales proceeds received.
- When the funds will be used for development, including mixed finance transactions, and the funds were not obligated before 3/31/11 but the Board approved or authorized the commitment of these reserves for an eligible expense. Typically, PHAs cannot use operating subsidy for mixed-finance or other development transactions without obtaining HUD's approval under the Operating Fund Financing Program. If a PHA plans to use its operating reserves for this purpose and has received such an approval from HUD, the PHA may request an exclusion for the funds by submitting HUD's approval. For other mixed finance or development transactions, when the PHA plans to request HUD approval under the Operating Fund Financing Program but that approval has not yet been obtained, a PHA may request an exclusion. In these cases, the PHA must submit:
    - Evidence that the PHA cannot proceed with the commitment without the funds that the PHA is requesting be excluded; and
    - A copy of the Board Resolution approving or authorizing the project, and
    - A copy of the relevant sections of the PHAs annual plan approved by HUD not later than 3/31/11; and
    - One of the following:
      - Copies of Requests for Proposals (RFPs) issued; or
      - Approved grant applications; or
      - Submitted rental term sheet; or
      - Submitted development proposal; or
      - Other similar significant documentation.

3. **Category 3: Other Circumstances.** The other circumstances in which a PHA may request an exclusion from the PHAs calculated operating reserves are when the PHA is self insured, penalties for the liquidation of assets, material contingencies that are probable and readily estimated (FASB 5), homeownership units in inventory, the repayment of ineligible costs, and mixed finance deals. There also may be other unique circumstances in which a PHA may request an exclusion.

- a. **Self Insured PHAs.** PHAs that self-insure all or a portion their public housing program may request an exclusion from their reserves for an amount that is materially above their normal, historical, current liabilities by the amount necessary to cover their unique risk and insurance needs. The PHA must submit:

- Historical and current (1) payment claims, (2) actual payments, (3) actuarial determined current and long-term liabilities; and
  - A pro forma income statement as described above.
- b. Long-term liabilities and contingencies. PHAs may request an exclusion for some long-term liabilities and contingencies, most notably FASB 5 liabilities (ongoing litigation) and legal settlements or judgments, including those liabilities incurred subsequent to the FDS submission that HUD used to calculate the PHAs allocation adjustment.
- HUD will not consider requests for exclusions for liabilities such as pensions, other post employment benefits, or uncompensated absences.
  - HUD will not consider requests for exclusions for liabilities due within the next year because they would be classified as a current, not long-term, and already reduced the PHAs operating reserves.
  - For FASB 5 liabilities the PHA must submit evidence of the claim, that it is probable that the PHA will not prevail in defending the claim, and that the PHA has reasonably estimated the potential liability of the claim and that the PHA has or will report the liability in their financial statements.
  - For court settlements or legal judgments, the PHA must submit copies of the legal documents which show the total amount of the liability, the payment terms and schedule, and the source of funding approved for payment of the liability.
  - For all long-term liabilities and contingencies, the PHA must document that the allocation adjustment will significantly impact the PHA's ability to satisfy the judgment in future years. This documentation must include a pro forma income statement as described above.
- c. Penalties for early liquidation of investments. If a PHA will incur a penalty as a result of needing to liquidate an investment (i.e., a CD) into cash earlier than the terms of the agreement due to the allocation adjustment, the PHA may request that the allocation adjustment be reduced by the amount of the cash penalty. The PHA must submit documentation of the dollar amount(s) of the investment instrument(s), the maturity date(s) and the dollar amount of penalty(ies) that will be imposed.
- d. Homeownership Programs. PHAs may request an exclusion for the book value of units being sold that are included in the PHA's operating reserve calculation. The book value of these units is normally reported in FDS line 145 Assets held for Sale" on the FDS, which flows into the reserve calculation.

Under the terms of some homeownership programs, the sale proceeds must be used to purchase and resell other unit(s). Net sale proceeds that are restricted in this way should be reported as restricted and should not be part of the PHA's reserve calculation.

The PHA must submit documentation that the book value of the homeownership units was included in the PHA's reserve calculation. The PHA must submit evidence of the amount of the net sale proceeds and information on how the PHA has accounted for the proceeds, including the cash and investment balance of these funds. The PHA must also submit documentation supporting HUD approved use of the sale proceeds.

- e. **Repayment of Ineligible Costs.** During an audit, certain costs may be determined to be ineligible costs of the public housing program. PHAs will normally reflect an asset on the books of the program to represent a receivable that will be paid to reimburse the program.

The PHA must submit documentation of the actual audit finding that gave rise to the actual cost, information on how the PHA has accounted for the ineligible costs, and the amount of ineligible cost that has been paid to date.

- f. **Mixed Finance Projects.** HUD is not providing a specific list of items or transactions that would warrant a request for exclusion in mixed finance deals. A number of situations that may be present in a mixed finance transaction have been discussed in prior sections of this Notice. PHAs should refer to those sections for guidance.

PHAs may also request an exclusion for other transactions that are not properly reported in the mixed finance project column of the FDS but meet the definition of restricted (as per GASB 34), or that are reported correctly in the FDS but are unavailable for current use, such as interest and principal payments received or recorded as receivables on loans to the partnership, developer fees, or cash balances required to be held by the PHA under the partnership agreement.

The PHA must submit documentation substantiating the unavailability of these funds. This documentation could include the Regulatory and Operating Agreement, HUD Program Income Certifications, or other legal documents. The PHA must provide this information at the project level and provide the specific project number under which the mixed finance project was reported in the FDS.

- g. **Unique Circumstances.** There may be other unique or exceptional circumstances not described above for which the PHA may request an exclusion from the subsidy allocation adjustment. For example, when, in response to a federal, state or other declared disaster, a PHA spent or will spend operating reserves after the FYE date HUD used to calculate the PHA's reserves. PHAs are reminded, however, that for all requests for exclusions the basic documents in subparagraph 9.D. "Basic Required Documents" must be met.

## **10. Additional Required Submission with the Excel Tools**

As provided in PIH Notice 2011-48, Guidance on Reporting Public Housing Agency Executive Compensation Information and Conducting Comparability Analysis, PHAs that receive operating subsidy are required to complete the **Form HUD 52725** Executive Compensation form and submit it together with the HUD 52723 Tool to their appropriate Field Office. See PIH Notice 2011-48. All of the information regarding the completion and submission of the form HUD 52725, including a link to the data collection form, will be available on the “Executive Compensation Data Collection” link on the Calendar Year 2012 Subsidy Processing web page.

## **11. PHA Board Resolution**

In the past, PHA Boards certified approval of both the operating subsidy forms and the operating budget. Now that operating subsidy forms are submitted separately from the operating budget, Boards certify approval of only the operating budget. Board Resolutions approving the operating budget must be submitted to the appropriate field office **prior to the beginning of the PHA’s fiscal year**.

Only one PHA Board Resolution, Form HUD-52574, needs to be submitted per PHA, regardless of the number of projects. If the PHA has more than one project, note 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).

## **12. HUD Approval of Calculations**

HUD will post on the Asset Management website an explanation of its funding methodology and obligation letters for each set of interim months funded. Based on the FFY 2012 Appropriations Act, the submitted documentation of PHA’s, appeals and revisions as provided in this Notice, HUD will determine final operating subsidy levels for CY 2012. HUD will then approve operating subsidy calculations at that level. Final subsidy levels for PHAs will be posted on the Calendar Year 2012 Subsidy Processing web page.

## **13. 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).

## **14. Further Information**

All questions from PHAs are to be referred to the appropriate field office.

**15. Paperwork Reduction**

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 control number.

/s/

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Sandra B. Henriquez  
Assistant Secretary for Public and Indian Housing

## Attachment A

### Appeals under the Operating Fund Program for Calendar Year 2012

#### 1. Purpose

This updates annual instructions to public housing agencies (PHAs) and field offices for appeals pursuant to 24 CFR Part 990, the Public Housing Operating Fund Program, Subpart G, for calendar year (CY) 2012.

#### 2. Types of Appeals

24 CFR 990.245 establishes five types of appeals:

- a. 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.
- b. Appeal of formula income for economic hardship: This appeal is no longer applicable since the frozen formula income provisions of 24 CFR 990.195 have expired.
- c. Appeal for specific local conditions: This appeal requires the PHA to demonstrate that the model-generated project expense levels (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.
- d. 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 experiencing extreme population loss or economic dislocations may have a shortage of applicants, even with PHA aggressive marketing and outreach.
- e. 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 subpart H. For this type of appeal, the PHA must also submit an independent cost assessment.

#### 3. 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” and “substitute actual project cost data” appeals, the PHA is to acquire, at its own expense, an independent cost assessment on each public housing project. The assessor must have appropriate knowledge of multifamily operating costs within the local market. The independent cost assessment includes:

- a. **Comparable Data:** Cited data must be verifiable by HUD with complete source identification. Itemized comparative data must include: locality, occupancy type, building type and PELs. (Refer to Public and Indian Housing *PIC Development Submodule User Manual*, pages 4 – 7, for definitions of building types.)
- b. **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.
- c. **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; and
  - 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.

- d. For “substitute actual project cost data” appeals, the appeal must include items a, b and c described above for independent cost assessments and:
  - 1) Two years of actual project cost data, showing that PHA costs are not greater than costs at comparable properties in the PHA’s local market; and
  - 2) Documentation certifying the PHA has completed transition to asset management pursuant to 24 CFR 990.290.

#### **4. Processing Requirements for CY 2012**

For “streamlined” appeals, the PHA describes the flaw and submits supporting documentation to the address below. Appeals for “changing market conditions” are to be submitted and processed along with the PHA’s request for operating subsidy on form HUD-52723, Operating Fund Calculation of Operating Subsidy.

Appeals under the definitions for “streamlined”, “specific local conditions”, and “substitute actual project cost data” must be sent to HUD Headquarters at the address below at the same time that the PHA’s original submission of operating subsidy eligibility is sent to its HUD field office. The PHA also must provide a copy of the appeal to the Public Housing Director of the field office.

HUD Office of Public and Indian Housing  
Real Estate Assessment Center  
Financial Management Division  
550 12<sup>th</sup> St., SW, Washington, D.C., 20410  
Attn: Andrea Williamson (telephone 202-475-8607)

For “streamlined” appeals, the PHA describes the flaw and submits supporting documentation to the above address. For “specific local conditions” and “actual project cost data” appeals, the PHA must include the independent cost assessment with its submission. In addition, HUD will contract with a second professional assessor who is familiar with property management practices and costs in the region or state in which the PHA is located to review the initial assessment submitted by the PHA. This review and recommendation is forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination.

For CY 2012, final appeal decisions will be issued within 120 days of PHA submission to HUD Headquarters. If an appeal is granted, HUD adjusts the PHA’s subsidy by the appropriate amount retroactive to the beginning of the year.