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needs of the PHA and the actions required to address the program deficiencies.

(b) *HUD written report.* HUD must provide the PHA a written report of its on-site review containing HUD findings of program management deficiencies, the apparent reasons for the deficiencies, and recommendations for improvement.

(c) *PHA corrective action plan.* Upon receipt of the HUD written report on its on-site review, the PHA must write a corrective action plan and submit it to HUD for approval. The corrective action plan must:

- (1) Specify goals to be achieved;
- (2) Identify obstacles to goal achievement and ways to eliminate or avoid them;
- (3) Identify resources that will be used or sought to achieve goals;
- (4) Identify an PHA staff person with lead responsibility for completing each goal;
- (5) Identify key tasks to reach each goal;
- (6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and
- (7) Provide for regular evaluation of progress toward improvement.

(8) Be signed by the PHA board of commissioners chairperson and by the PHA executive director. If the PHA is a unit of local government or a state, the corrective action plan must be signed by the Section 8 program director and by the chief executive officer of the unit of government or his or her designee.

(d) *Monitoring.* The PHA and HUD must monitor the PHA's implementation of its corrective action plan to ensure performance targets are met.

(e) *Use of administrative fee reserve prohibited.* Any PHA assigned an overall performance rating of troubled may not use any part of the administrative fee reserve for other housing purposes (see 24 CFR 982.155(b)).

(f) *Upgrading poor performance rating.* HUD shall change an PHA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved PHA

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performance and an improved SEMAP score.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

[63 FR 48555, Sept. 10, 1998, as amended at 68 FR 37672, June 24, 2003]

### § 985.108 SEMAP records.

HUD shall maintain SEMAP files, including certifications, notifications, appeals, corrective action plans, and related correspondence for at least 3 years.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0215)

### § 985.109 Default under the Annual Contributions Contract (ACC).

HUD may determine that an PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC.

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## PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

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AUTHORITY: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

SOURCE: 70 FR 54997, Sept. 19, 2005, unless otherwise noted.

**Subpart A—Purpose, Applicability, Formula, and Definitions**

**§ 990.100 Purpose.**

This part implements section 9(f) of the United States Housing Act of 1937 (1937 Act), (42 U.S.C. 1437g). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. In the case of unsubsidized housing, the total expenses of operating rental housing should be covered by the operating income, which primarily consists of rental income and, to some degree, investment and non-rental income. In the case of public housing, the Operating Fund provides operating subsidy to assist PHAs to serve low, very low, and extremely low-income families. This part describes the policies and procedures for Operating Fund formula calculations and management under the Operating Fund Program.

**§ 990.105 Applicability.**

(a) *Applicability of this part.* (1) With the exception of subpart I of this part, this part is applicable to all PHA rental units under an Annual Contributions Contract (ACC). This includes PHAs that have not received operating subsidy previously, but are eligible for operating subsidy under the Operating Fund Formula.

(2) This part is applicable to all rental units managed by a resident management corporation (RMC), including a direct-funded RMC.

(b) *Inapplicability of this part.* (1) This part is not applicable to Indian Housing, section 5(h) and section 32 homeownership projects, the Housing Choice

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Voucher Program, the section 23 Leased Housing Program, or the section 8 Housing Assistance Payments Programs.

(2) With the exception of subpart J of this part, this part is not applicable to the Mutual Help Program or the Turnkey III Homeownership Opportunity Program.

### § 990.110 Operating fund formula.

(a) *General formula.* (1) The amount of annual contributions (operating subsidy) each PHA is eligible to receive under this part shall be determined by a formula.

(2) In general, operating subsidy shall be the difference between formula expense and formula income. If a PHA's formula expense is greater than its formula income, then the PHA is eligible for an operating subsidy.

(3) Formula expense is an estimate of a PHA's operating expense and is determined by the following three components: Project Expense Level (PEL), Utility Expense Level (UEL), and other formula expenses (add-ons). Formula expense and its three components are further described in subpart C of this part. Formula income is an estimate for a PHA's non-operating subsidy revenue and is further described in subpart D of this part.

(4) Certain portions of the operating fund formula (*e.g.*, PEL) are calculated in terms of per unit per month (PUM) amounts and are converted into whole dollars by multiplying the PUM amount by the number of eligible unit months (EUMs). EUMs are further described in subpart B of this part.

(b) *Specific formula.* (1) A PHA's formula amount shall be the sum of the three formula expense components calculated as follows: {[PEL multiplied by EUM] plus [UEL multiplied by EUM] plus add-ons} minus (formula income multiplied by EUM).

(2) A PHA whose formula amount is equal to or less than zero is still eligible to receive operating subsidy equal to its most recent actual audit cost for its Operating Fund Program.

(3) Operating subsidy payments will be limited to the availability of funds as described in § 990.210(c).

(c) *Non-codified formula elements.* This part defines the major components of

the Operating Fund Formula and describes the relationships of these various components. However, this part does not codify certain secondary elements that will be used in the revised Operating Fund Formula. HUD will more appropriately provide this information in non-codified guidance, such as a Handbook, FEDERAL REGISTER notice, or other non-regulatory means that HUD determines appropriate.

### § 990.115 Definitions.

The following definitions apply to the Operating Fund program:

*1937 Act* means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Annual contributions contract (ACC)* is a contract prescribed by HUD for loans and contributions, which may be in the form of operating subsidy, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of its public housing projects.

*Asset management* is a management model that emphasizes project-based management, as well as long-term and strategic planning.

*Current consumption level* is the amount of each utility consumed at a project during the 12-month period that ended the June 30th prior to the beginning of the applicable funding period.

*Eligible unit months (EUM)* are the actual number of PHA units in eligible categories expressed in months for a specified time frame and for which a PHA receives operating subsidy.

*Formula amount* is the amount of operating subsidy a PHA is eligible to receive, expressed in whole dollars, as determined by the Operating Fund Formula.

*Formula expense* is an estimate of a PHA's operating expense used in the Operating Fund Formula.

*Formula income* is an estimate of a PHA's non-operating subsidy revenue used in the Operating Fund Formula.

*Funding period* is the calendar year for which HUD will distribute operating subsidy according to the Operating Fund Formula.

*Operating Fund* is the account/program authorized by section 9 of the

1937 Act for making operating subsidy available to PHAs for the operation and management of public housing.

*Operating Fund Formula (or Formula)* means the data and calculations used under this part to determine a PHA's amount of operating subsidy for a given period.

*Operating subsidy* is the amount of annual contributions for operations a PHA receives each funding period under section 9 of the 1937 Act as determined by the Operating Fund Formula in this part.

*Other operating costs (add-ons)* means PHA expenses that are recognized as formula expenses but are not included either in the project expense level or in the utility expense level.

*Payable consumption level* is the amount for all utilities consumed at a project that the Formula recognizes in the computation of a PHA's utility expense level at that project.

Per unit per month (PUM) describes a dollar amount on a monthly basis per unit, such as Project Expense Level, Utility Expense Level, and formula income.

*Project* means each PHA project under an ACC to which the Operating Fund Formula is applicable. However, for purposes of asset management, as described in subpart H of this part, projects may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project or projects under the ACC.

*Project-based management* is the provision of property management services that is tailored to the unique needs of each property, given the resources available to that property.

*Project expense level (PEL)* is the amount of estimated expenses for each project (excluding utilities and add-ons) expressed as a PUM cost.

*Project units* means all dwelling units in all of a PHA's projects under an ACC.

*Rolling base consumption level (RBCL)* is the average of the yearly consumption levels for the 36-month period ending on the June 30th that is 18 months prior to the beginning of the applicable funding period.

*Transition funding* is the timing and amount by which a PHA will realize increases and reductions in operating

subsidy based on the new funding levels of the Operating Fund Formula.

*Unit months* are the total number of project units in a PHA's inventory expressed in months for a specified time frame.

*Utilities* means electricity, gas, heating fuel, water, and sewerage service.

*Utilities expense level (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.

*Utility rate (rate)* means the actual average rate for any given utility for the most recent 12-month period that ended the June 30th prior to the beginning of the applicable funding period.

*Yearly consumption level* is the actual amount of each utility consumed at a project during a 12-month period ending June 30th.

#### § 990.116 Environmental review requirements.

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.

### Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

#### § 990.120 Unit months.

(a) Some of the components of HUD's Operating Fund Formula are based on a measure known as unit months. Unit months represent a PHA's public housing inventory during a specified period of time. The unit months eligible for operating subsidy in a 12-month period are equal to the number of months that the units are in an operating subsidy-eligible category, adjusted for changes in inventory (*e.g.*, units added or removed), as described below.

(b) A PHA is eligible to receive operating subsidy for a unit on the date it is both placed under the ACC and occupied. The date a unit is eligible for operating subsidy does not change the Date of Full Availability (DOFA) or the date of the End of Initial Operating Period (EIOP), nor does this provision place a project into management status.

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### § 990.125 Eligible units.

A PHA is eligible to receive operating subsidy for public housing units under an ACC for:

- (a) Occupied dwelling units as defined in § 990.140;
- (b) A dwelling unit with an approved vacancy (as defined in § 990.145); and
- (c) A limited number of vacancies (as defined in § 990.150).

### § 990.130 Ineligible units.

(a) Vacant units that do not fall within the definition of § 990.145 or § 990.150 are not eligible for operating subsidy under this part.

(b) Units that are eligible to receive an asset-repositioning fee, as described in § 990.190(h), are not eligible to receive operating subsidy under this subpart.

### § 990.135 Eligible unit months (EUMs).

(a) A PHA's total number of EUMs will be calculated for the 12-month period from July 1st to June 30th that is prior to the first day of the applicable funding period, and will consist of eligible units as defined in § 990.140, § 990.145, or § 990.150.

(b)(1) The determination of whether a public housing unit satisfies the requirements of § 990.140, § 990.145, or § 990.150 for any unit month shall be based on the unit's status as of either the first or last day of the month, as determined by the PHA.

(2) HUD reserves the right to determine the status of any and all public housing units based on information in its information systems.

(c) The PHA shall maintain and, at HUD's request, shall make available to HUD, specific documentation of the status of all units, including, but not limited to, a listing of the units, street addresses or physical address, and project/management control numbers.

(d) Any unit months that do not meet the requirements of this subpart are not eligible for operating subsidy, and will not be subsidized by the Operating Fund.

### § 990.140 Occupied dwelling units.

A PHA is eligible to receive operating subsidy for public housing units for each unit month that those units are under an ACC and occupied by a

public housing-eligible family under lease.

### § 990.145 Dwelling units with approved vacancies.

(a) A PHA is eligible to receive operating subsidy for vacant public housing units for each unit month the units are under an ACC and meet one of the following HUD-approved vacancies:

(1) *Units undergoing modernization.* Vacancies resulting from project modernization or unit modernization (such as work necessary to reoccupy vacant units) provided that one of the following conditions is met:

(i) The unit is undergoing modernization (*i.e.*, the modernization contract has been awarded or force account work has started) and must be vacant to perform the work, and the construction is on schedule according to a HUD-approved PHA Annual Plan; or

(ii) The unit must be vacant to perform the work and the treatment of the vacant unit is included in a HUD-approved PHA Annual Plan, but the time period for placing the vacant unit under construction has not yet expired. The PHA shall place the vacant unit under construction within two federal fiscal years (FFYs) after the FFY in which the capital funds are approved.

(2) *Special use units.* Units approved and used for resident services, resident organization offices, and related activities, such as self-sufficiency and anti-crime initiatives.

(b) On a project-by-project basis, subject to prior HUD approval and for the time period agreed to by HUD, a PHA shall receive operating subsidy for the units affected by the following events that are outside the control of the PHA:

(1) *Litigation.* Units that are vacant due to litigation, such as a court order or settlement agreement that is legally enforceable; units that are vacant in order to meet regulatory and statutory requirements to avoid potential litigation (as covered in a HUD-approved PHA Annual Plan); and units under voluntary compliance agreements with HUD or other voluntary compliance agreements acceptable to HUD (*e.g.*, units that are being held vacant as part of a court-order, HUD-approved

desegregation plan, or voluntary compliance agreement requiring modifications to the units to make them accessible pursuant to 24 CFR part 8).

(2) *Disasters.* Units that are vacant due to a federally declared, state-declared, or other declared disaster.

(3) *Casualty losses.* Damaged units that remain vacant due to delays in settling insurance claims.

(c) A PHA may appeal to HUD to receive operating subsidy for units that are vacant due to changing market conditions (see subpart G of this part—Appeals).

**§ 990.150 Limited vacancies.**

(a) *Operating subsidy for a limited number of vacancies.* HUD shall pay operating subsidy for a limited number of vacant units under an ACC if the annualized vacancy rate is less than or equal to:

(1) Three percent of the PHA's total unit inventory (not to exceed 100 percent of the unit months under an ACC) for the period July 1, 2004, to June 30, 2005, and

(2) Three percent of the total units on a project-by-project basis based on the definition of a project under subpart H of this part, beginning July 1, 2005.

(b) *Exception for PHAs with 100 or fewer units.* Notwithstanding paragraph (a) of this section, a PHA with 100 or fewer units will be paid operating subsidy for up to five vacant units not to exceed 100 percent of the unit months under an ACC. For example, a PHA with an inventory of 100 units and four vacancies during its fiscal year will be eligible for operating subsidy for all 100 units. A PHA with an inventory of 50 units with seven vacancies during its fiscal year will be eligible for operating subsidy for 48 units.

EFFECTIVE DATE NOTE: At 81 FR 12377, March 8, 2016, § 990.150(a) was revised, effective April 7, 2016. For the convenience of the user, the revised text is set forth as follows:

**§ 990.150 Limited vacancies.**

(a) *Operating subsidy for a limited number of vacancies.* HUD will pay operating subsidy for a limited number of vacant units under an ACC. The limited number of vacant units must be equal to or less than 3 percent of the unit months on a project-by-project basis based on the definition of a project under

§ 990.265 (provided that the number of eligible unit months does not exceed 100 percent of the unit months for a project).

\* \* \* \* \*

**§ 990.155 Addition and deletion of units.**

(a) *Changes in public housing unit inventory.* To generate a change to its formula amount within each one-year funding period, PHAs shall periodically (*e.g.*, quarterly) report the following information to HUD, during the funding period:

(1) New units that were added to the ACC, and occupied by a public housing-eligible family during the prior reporting period for the one-year funding period, but have not been included in the previous EUMs' data; and

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with the provisions in § 990.190(h).

(b) *Revised EUM calculation.* (1) For new units, the revised calculation shall assume that all such units will be fully occupied for the balance of that funding period. The actual occupancy/vacancy status of these units will be included to calculate the PHA's operating subsidy in the subsequent funding period after these units have one full year of a reporting cycle.

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with § 990.190(h) are not to be included in the calculation of EUMs. Funding for these units is provided under the conditions described in § 990.190(h).

**Subpart C—Calculating Formula Expenses**

**§ 990.160 Overview of calculating formula expenses.**

(a) *General.* Formula expenses represent the costs of services and materials needed by a well-run PHA to sustain the project. These costs include items such as administration, maintenance, and utilities. HUD also determines a PHA's formula expenses at a project level. HUD uses the following three factors to determine the overall formula expense level for each project:

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(1) The project expense level (PEL) (calculated in accordance with § 990.165);

(2) The utilities expense level (UEL) (calculated in accordance with §§ 990.170, 990.175, 990.180, and 990.185); and

(3) Other formula expenses (add-ons) (calculated in accordance with § 990.190).

(b) *PEL, UEL, and Add-ons.* Each project of a PHA has a unique PEL and UEL. The PEL for each project is based on ten characteristics and certain adjustments described in § 990.165. The PEL represents the normal expenses of operating public housing projects, such as maintenance and administration costs. The UEL for each project represents utility expenses. Utility expense levels are based on an incentive system aimed at reducing utility expenses. Both the PEL and UEL are expressed in PUM costs. The expenses not included in these expense levels and which are unique to PHAs are titled “other formula expenses (add-ons)” and are expressed in a dollar amount.

(c) *Calculating project formula expense.* The formula expense of any one project is the sum of the project’s PEL and the UEL, multiplied by the total EUMs specific to the project, plus the add-ons.

### § 990.165 Computation of project expense level (PEL).

(a) *Computation of PEL.* The PEL is calculated in terms of PUM cost and represents the costs associated with the project, except for utility and add-on costs. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses, such as project insurance. HUD will calculate the PEL using regression analysis and benchmarking for the actual costs of Federal Housing Administration (FHA) projects to estimate costs for public housing projects. HUD will use the ten variables described in paragraph (b) of this section and their associated coefficient (*i.e.*, values that are expressed in percentage terms) to produce a PEL.

(b) *Variables.* The ten variables are:

(1) Size of project (number of units);

(2) Age of property (Date of Full Availability (DOFA));

(3) Bedroom mix;

(4) Building type;

(5) Occupancy type (family or senior);

(6) Location (an indicator of the type of community in which a property is located; location types include rural, city central metropolitan, and non-city central metropolitan (suburban) areas);

(7) Neighborhood poverty rate;

(8) Percent of households assisted;

(9) Ownership type (profit, non-profit, or limited dividend); and

(10) Geographic.

(c) *Cost adjustments.* HUD will apply four adjustments to the PEL. The adjustments are:

(1) Application of a \$200 PUM floor for any senior property and a \$215 PUM floor for any family property;

(2) Application of a \$420 PUM ceiling for any property except for New York City Housing Authority projects, which have a \$480 PUM ceiling;

(3) Application of a four percent reduction for any PEL calculated over \$325 PUM, with the reduction limited so that a PEL will not be reduced to less than \$325; and

(4) The reduction of audit costs as reported for FFY 2003 in a PUM amount.

(d) *Annual inflation factor.* The PEL for each project shall be adjusted annually, beginning in 2005, by the local inflation factor. The local inflation factor shall be the HUD-determined weighted average percentage increase in local government wages and salaries for the area in which the PHA is located, and non-wage expenses.

(e) *Calculating a PEL.* To calculate a specific PEL for a given property, the sum of the coefficients for nine variables (all variables except ownership type) shall be added to a formula constant. The exponent of that sum shall be multiplied by a percentage to reflect the non-profit ownership type, which will produce an unadjusted PEL. For the calculation of the initial PEL, the cost adjustments described in paragraphs (c)(1), (c)(2), and (c)(3) of this section will be applied. After these initial adjustments are applied, the audit adjustment described in paragraph (c)(4) of this section will be applied to arrive at the PEL in year 2000 dollars. After the PEL in year 2000 dollars is

created, the annual inflation factor as described in paragraph (d) of this section will be applied cumulatively to this number through 2004 to yield an initial PEL in terms of current dollars.

(f) *Calculation of the PEL for Moving to Work PHAs.* PHAs participating in the Moving to Work (MTW) Demonstration authorized under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996) shall receive an operating subsidy as provided in Attachment A of their MTW Agreements executed prior to November 18, 2005. PHAs with an MTW Agreement will continue to have the right to request extensions of or modifications to their MTW Agreements.

(g) *Calculation of the PELs for mixed-finance developments.* If, prior to November 18, 2005, a PHA has either a mixed-finance arrangement that has closed or has filed documents in accordance with 24 CFR 941.606 for a mixed-finance transaction, then the project covered by the mixed-finance transaction will receive funding based on the higher of its former Allowable Expense Level or the new computed PEL.

(h) *Calculation of PELs when data are inadequate or unavailable.* When sufficient data are unavailable for the calculation of a PEL, HUD may calculate a PEL using an alternative methodology. The characteristics may be used from similarly situated properties.

(i) *Review of PEL methodology by advisory committee.* In 2009, HUD will convene a meeting with representation of appropriate stakeholders, to review the methodology to evaluate the PEL based on actual cost data. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA). HUD may determine appropriate funding levels for each project to be effective in FY 2011 after following appropriate rulemaking procedures.

**§ 990.170 Computation of utilities expense level (UEL): Overview.**

(a) *General.* The UEL for each PHA is based on its consumption for each utility, the applicable rates for each utility, and an applicable inflation factor. The UEL for a given funding period is

the product of the utility rate multiplied by the payable consumption level multiplied by the inflation factor. The UEL is expressed in terms of PUM costs.

(b) *Utility rate.* The utility rate for each type of utility will be the actual average rate from the most recent 12-month period that ended June 30th prior to the beginning of the applicable funding period. The rate will be calculated by dividing the actual utility cost by the actual utility consumption, with consideration for pass-through costs (e.g., state and local utility taxes, tariffs) for the time period specified in this paragraph.

(c) *Payable consumption level.* The payable consumption level is based on the current consumption level adjusted by a utility consumption incentive. The incentive shall be computed by comparing current consumption levels of each utility to the rolling base consumption level. If the comparison reflects a decrease in the consumption of a utility, the PHA shall retain 75 percent of this decrease. Alternately, if the comparison reflects an increase in the consumption of a utility, the PHA shall absorb 75 percent of this increase.

(d) *Inflation factor for utilities.* The UEL shall be adjusted annually by an inflation/deflation factor based upon the fuels and utilities component of the United States Department of Labor, Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers (CPI-U). The annual adjustment to the UEL shall reflect the most recently published and localized data available from BLS at the time the annual adjustment is calculated.

(e) *Increases in tenant utility allowances.* Increases in tenant utility allowances, as a component of the formula income, as described in § 990.195, shall result in a commensurate increase of operating subsidy. Decreases in such utility allowances shall result in a commensurate decrease in operating subsidy.

(f) *Records and reporting.* (1) Appropriate utility records, satisfactory to HUD, shall be developed and maintained, so that consumption and rate data can be determined.



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(2) All records shall be kept by utility and by project for each 12-month period ending June 30th.

(3) HUD will notify each PHA when HUD has the automated systems capacity to receive such information. Each PHA then will be obligated to provide consumption and cost data to HUD for all utilities for each project.

(4) If a PHA has not maintained or cannot recapture utility data from its records for a particular utility, the PHA shall compute the UEL by:

(i) Using actual consumption data for the last complete year(s) of available data or data of comparable project(s) that have comparable utility delivery systems and occupancy, in accordance with a method prescribed by HUD; or

(ii) Requesting field office approval to use actual PUM utility expenses for its UEL in accordance with a method prescribed by HUD when the PHA cannot obtain necessary data to calculate the UEL in accordance with paragraph (f)(4)(i) of this section.

**§ 990.175 Utilities expense level: Computation of the current consumption level.**

The current consumption level shall be the actual amount of each utility consumed during the 12-month period ending June 30th that is 6 months prior to the first day of the applicable funding period.

**§ 990.180 Utilities expense level: Computation of the rolling base consumption level.**

(a) *General.* (1) The rolling base consumption level (RBCL) shall be equal to the average of yearly consumption levels for the 36-month period ending on the June 30th that is 18 months prior to the first day of the applicable funding period.

(2) The yearly consumption level is the actual amount of each utility consumed during a 12-month period ending June 30th. For example, for the funding period January 1, 2006, through December 31, 2006, the RBCL will be the average of the following yearly consumption levels:

(i) Year 1 = July 1, 2001, through June 30, 2002.

(ii) Year 2 = July 1, 2002, through June 30, 2003.

(iii) Year 3 = July 1, 2003, through June 30, 2004.

NOTE TO PARAGRAPH (a)(2): In this example, the current year's consumption level will be July 1, 2004, through June 30, 2005.

(b) *Distortions to rolling base consumption level.* The PHA shall have its RBCL determined so as not to distort the rolling base period in accordance with a method prescribed by HUD if:

(1) A project has not been in operation during at least 12 months of the rolling base period;

(2) A project enters or exits management after the rolling base period and prior to the end of the applicable funding period; or

(3) A project has experienced a conversion from one energy source to another, switched from PHA-supplied to resident-purchased utilities during or after the rolling base period, or for any other reason that would cause the RBCL not to be comparable to the current year's consumption level.

(c) *Financial incentives.* The three-year rolling base for all relevant utilities will be adjusted to reflect any financial incentives to the PHA to reduce consumption as described in § 990.185.

**§ 990.185 Utilities expense level: Incentives for energy conservation/rate reduction.**

(a) *General/consumption reduction.* If a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for the incentives available under this section. For a PHA to qualify for these incentives, the PHA must enter into a contract to finance the energy conservation measures, and must obtain HUD approval. Such approval shall be based on a determination that payments under a contract can be funded from reasonably anticipated energy cost savings. The contract period shall not exceed 20 years. The energy conservation measures may include, but are not limited to: Physical improvements financed by a loan from a bank, utility, or governmental entity; management of costs under the performance contract; or a shared savings agreement with a private energy service company. All such contracts shall

be known as energy performance contracts. PHAs may extend an executed energy performance contract with a term of less than 20 years to a term of not more than 20 years, to permit additional energy conservation improvements without the reprourement of energy performance contractors. The PHA must obtain HUD approval to extend the term of an executed energy performance contract.

(1) *Frozen rolling base.* (i) If a PHA undertakes energy conservation measures that are approved by HUD, the RBCL for the project and the utilities involved may be frozen during the contract period. Before the RBCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The RBCL also may be adjusted to reflect systems repaired to meet applicable building and safety codes as well as to reflect adjustments for occupancy rates increased by rehabilitation. The RBCL shall be frozen at the level calculated for the year during which the conservation measures initially shall be implemented.

(ii) The PHA operating subsidy eligibility shall reflect the retention of 100 percent of the savings from decreased consumption until the term of the financing agreement is complete. The PHA must use at least 75 percent of the cost savings to pay off the debt, *e.g.*, pay off the contractor or bank loan. If less than 75 percent of the cost savings is used for debt payment, however, HUD shall retain the difference between the actual percentage of cost savings used to pay off the debt and 75 percent of the cost savings. If at least 75 percent of the cost savings is paid to the contractor or bank, the PHA may use the full amount of the remaining cost savings for any eligible operating expense.

(iii) The annual three-year rolling base procedures for computing the RBCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the RBCL after the end of the contract period shall be the yearly consumption levels for the final three years of the contract.

(2) PHAs undertaking energy conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive, using the following methodology:

(i) The PHA reviews and updates all utility allowances to ascertain that residents are receiving the proper allowances before energy savings measures are begun;

(ii) The PHA makes future calculations of rental income for purposes of the calculation of operating subsidy eligibility based on these baseline allowances. In effect, HUD will freeze the baseline allowances for the duration of the contract;

(iii) After implementation of the energy conservation measures, the PHA updates the utility allowances in accordance with provisions in 24 CFR part 965, subpart E. The new allowance should be lower than baseline allowances;

(iv) The PHA uses at least 75 percent of the savings for paying the cost of the improvement (the PHA will be permitted to retain 100 percent of the difference between the baseline allowances and revised allowances);

(v) After the completion of the contract period, the PHA begins using the revised allowances in calculating its operating subsidy eligibility; and

(vi) The PHA may exclude from its calculation of rental income the increased rental income due to the difference between the baseline allowances and the revised allowances of the projects involved, for the duration of the contract period.

(3) *Subsidy add-on.* (i) If a PHA qualifies for this incentive (*i.e.*, the subsidy add-on, in accordance with the provisions of paragraph (a) of this section), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the loan for the energy conservation measures and other direct costs related to the energy project under the contract during the term of the contract subject to the provisions of this paragraph (a)(3) of this section. The PHA's operating subsidy for the current funding year will continue to be calculated in accordance with paragraphs (a), (b), and (c) of § 990.170 (*i.e.*, the rolling base is

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not frozen). The PHA will be able to retain part of the cost savings in accordance with § 990.170(c).

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure will be subtracted from the expected energy cost, to produce the energy cost savings for the year.

(iii) If the cost savings for any year during the contract period are less than the amount of operating subsidy to be made available under this paragraph to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(iv) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 20-year limit) if HUD determines that the shortfall is the result of changed circumstances, rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may be extended only to accommodate payment to the contractor and associated direct costs.

(b) *Rate reduction.* If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals, or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain one-half the annual savings realized from these actions.

(c) *Utility benchmarking.* HUD will pursue benchmarking utility consumption at the project level as part of the transition to asset management. HUD intends to establish benchmarks by collecting utility consumption and cost information on a project-by-project basis. In 2009, after conducting a feasibility study, HUD will convene a meeting with representation of appropriate stakeholders to review utility benchmarking options so that HUD may determine whether or how to implement utility benchmarking to be effective in FY 2011. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA). The HUD study

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shall take into account typical levels of utilities consumption at public housing developments based upon factors such as building and unit type and size, temperature zones, age and construction of building, and other relevant factors.

[70 FR 54997, Sept. 19, 2005, as amended at 73 FR 61352, Oct. 16, 2008]

### § 990.190 Other formula expenses (add-ons).

In addition to calculating operating subsidy based on the PEL and UEL, a PHA's eligible formula expenses shall be increased by add-ons. The allowed add-ons are:

(a) *Self-sufficiency.* A PHA may request operating subsidy for the reasonable cost of program coordinator(s) and associated costs in accordance with HUD's self-sufficiency program regulations and notices.

(b) *Energy loan amortization.* A PHA may qualify for operating subsidy for payments of principal and interest cost for energy conservation measures described in § 990.185(a)(3).

(c) *Payments in lieu of taxes (PILOT).* 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.

(d) *Cost of independent audits.* 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 (31 U.S.C. 7501-7507) (see 2 CFR part 200, subpart F) or when a PHA elects to prepare and submit such an audit to HUD. For the purpose of this rule, 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. The most recent actual audit costs are used as a proxy to cover the cost of the next audit. If a PHA does not have a recent actual audit cost, the PHA working with HUD may establish an audit cost. A PHA that requests funding for an audit shall complete an audit. The results of the

audit shall be transmitted in a time and manner prescribed by HUD.

(e) *Funding for resident participation activities.* 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 part 964. For purposes of this section, a unit is eligible to receive resident participation funding if it is occupied by a public housing resident or it is occupied by a 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.

(f) *Asset management fee.* Each PHA with at least 250 units shall receive a \$4 PUM asset management fee. PHAs with fewer than 250 units that elect to transition to asset management shall receive an asset management fee of \$2 PUM. PHAs with fewer than 250 units that elect to have their entire portfolio treated and considered as a single project as described in § 990.260(b) or PHAs with only one project will not be eligible for an asset management fee. For all PHAs eligible to receive the asset management fee, the fee will be based on the total number of ACC units. PHAs that are not in compliance with asset management as described in subpart H of this part by FY 2011 will forfeit this fee.

(g) *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.

(h) *Asset repositioning fee.* (1) A PHA that transitions projects or entire buildings of a project out of its inventory is eligible for an asset-repositioning fee. This fee supplements the costs associated with administration and management of demolition or disposition, tenant relocation, and minimum protection and service associated with such efforts. The asset-repositioning fee is not intended for individual units within a multi-unit building undergoing similar activities.

(2) Projects covered by applications approved for demolition or disposition shall be eligible for an asset repositioning fee on the first day of the next quarter six months after the date the first unit becomes vacant after the relocation date included in the approved relocation plan. When this condition is met, the project and all associated units are no longer considered an EUM as described in § 990.155. Each PHA is responsible for accurately applying and maintaining supporting documentation on the start date of this transition period or is subject to forfeiture of this add-on.

(3) Units categorized for demolition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months, 50 percent PEL per unit for the next twelve months, and 25 percent PEL per unit for the next twelve months.

(4) Units categorized for disposition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months and 50 percent PEL per unit for the next twelve months.

(5) The following is an example of how eligibility for an asset-repositioning fee is determined:

(i) A PHA has HUD's approval to demolish (or dispose of) a 100-unit project from its 1,000 unit inventory. On January 12th, in conjunction with the PHA's approved Relocation Plan, a unit in that project becomes vacant. Accordingly, the demolition/disposition-approved project is eligible for an asset-repositioning fee on October 1st. (This date is calculated as follows: January 12th + six months = July 12th. The first day of the next quarter is October 1st.)

(ii) Although payment of the asset-repositioning fee will not begin until October 1st, the PHA will receive its full operating subsidy based on the 1,000 units through September 30th. On October 1st the PHA will begin to receive the 36-month asset-repositioning fee in accordance with paragraph (h)(3) of this section for the 100 units approved for demolition. (Asset repositioning fee requirements for projects

approved for disposition are found in paragraph (h)(4) of this section.) On October 1st, the PHA’s units will be 900.

(i) *Costs attributable to changes in Federal law, regulation, or economy.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulations has caused or will cause a significant change in expenditures of a continuing nature above the PEL and UEL, HUD may, at HUD’s sole discretion, decide to prescribe a procedure under which the PHA may apply for or may receive an adjustment in operating subsidy.

[70 FR 54997, Sept. 19, 2005, as amended at 80 FR 75943, Dec. 7, 2015]

**Subpart D—Calculating Formula Income**

**§ 990.195 Calculation of formula income.**

(a) *General.* For the purpose of the formula, formula income is equal to the amount of rent charged to tenants divided by the respective unit months leased, and is therefore expressed as a PUM. Formula income will be derived from a PHA’s year-end financial information. The financial information used in the formula income computation will be the audited information provided by the PHA through HUD’s information systems. The information will be calculated using the following PHA fiscal year-end information:

- (1) April 1, 2003, through March 31, 2004;
- (2) July 1, 2003, through June 30, 2004;
- (3) October 1, 2003, through September 30, 2004; and
- (4) January 1, 2004, through December 31, 2004.

(b) *Calculation of formula income.* To calculate formula income in whole dollars, the PUM amount will be multiplied by the EUMs as described in subpart B of this part.

(c) *Frozen at 2004 level.* After a PHA’s formula income is calculated as described in paragraph (a) of this section, it will not be recalculated or inflated for fiscal years 2007 through 2009, unless a PHA can show a severe local economic hardship that is impacting the PHA’s ability to maintain some semblance of its formula income (see subpart G of this part—Appeals). A PHA’s

formula income may be recalculated if the PHA appeals to HUD for an adjustment in its formula.

(d) *Calculation of formula income when data are inadequate or unavailable.* When audited data are unavailable in HUD’s information systems for the calculation of formula income, HUD may use an alternative methodology, including, but not limited to, certifications, hard copy reports, and communications with the respective PHAs.

(e) *Inapplicability of 24 CFR 85.25 (as revised April 1, 2013).* Formula income is not subject to the provisions regarding program income in 24 CFR 85.25 (as revised April 1, 2013).

[70 FR 54997, Sept. 19, 2005; 70 FR 61367, Oct. 24, 2005; 80 FR 75943, Dec. 7, 2015]

**Subpart E—Determination and Payment of Operating Subsidy**

**§ 990.200 Determination of formula amount.**

(a) *General.* The amount of operating subsidy that a PHA is eligible for is the difference between its formula expenses (as calculated under subpart C of this part) and its formula income (as calculated under subpart D of this part).

(b) *Use of HUD databases to calculate formula amount.* HUD shall utilize its databases to make the formula calculations. HUD’s databases are intended to be employed to provide information on all primary factors in determining the operating subsidy amount. Each PHA is responsible for supplying accurate information on the status of each of its units in HUD’s databases.

(c) *PHA responsibility to submit timely data.* PHAs shall submit data used in the formula on a regular and timely basis to ensure accurate calculation under the formula. If a PHA fails to provide accurate data, HUD will make a determination as to the PHA’s inventory, occupancy, and financial information using available or verified data, which may result in a lower operating subsidy. HUD has the right to adjust any or all formula amounts based on clerical, mathematical, and information system errors that affect any of the data elements used in the calculation of the formula.

**§ 990.205 Fungibility of operating subsidy between projects.**

(a) *General.* Operating subsidy shall remain fully fungible between ACC projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can be transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information, as described more fully in § 990.280, produces excess cash flow, and only in the amount up to those excess cash flows.

(b) Notwithstanding the provisions of paragraph (a) of this section and subject to all of the other provisions of this part, the New York City Housing Authority's Development Grant Project Amendment Number 180, dated July 13, 1995, to Consolidated Annual Contributions Contract NY-333, remains in effect.

**§ 990.210 Payment of operating subsidy.**

(a) *Payments of operating subsidy under the formula.* HUD shall make monthly payments equal to  $\frac{1}{12}$  of a PHA's total annual operating subsidy under the formula by electronic funds transfers through HUD's automated disbursement system. HUD shall establish thresholds that permit PHAs to request monthly installments. Requests by PHAs that exceed these thresholds will be subject to HUD review. HUD approvals of requests that exceed these thresholds are limited to PHAs that have an unanticipated and immediate need for disbursement.

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of the funding period, operating subsidy shall be provided monthly, quarterly, or annually based on the amount of the PHA's previous year's formula or another amount that HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available, HUD shall have discretion to revise, on a pro rata basis, the amounts of operating subsidy to be paid to PHAs.

**§ 990.215 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.**

(a) *General.* Each PHA is required to reexamine the income of each family in accordance with the provisions of the ACC, the 1937 Act, and HUD regulations. Income reexaminations shall be performed annually, except as provided in the 1937 Act, in HUD regulations, or in the MTW agreements. A PHA must be in compliance with all reexamination requirements in order to be eligible to receive full operating subsidy. A PHA's calculations of rent and utility allowances shall be accurate and timely.

(b) *A PHA in compliance.* A PHA shall submit a certification that states that the PHA is in compliance with the annual income reexamination requirements and its rent and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.

(c) *A PHA not in compliance.* Any PHA not in compliance with annual income reexamination requirements at the time of the submission of the calculation of operating subsidy shall furnish to the responsible HUD field office a copy of the procedures it is using to achieve compliance and a statement of the number of families that have undergone reexamination during the 12 months preceding the current funding cycle. If, on the basis of this submission or any other information, HUD determines that the PHA is not substantially in compliance with all of the annual income reexamination requirements, HUD shall withhold payments to which the PHA may be entitled under this part. Payment may be withheld in an amount equal to HUD's estimate of the loss of rental income to the PHA resulting from its failure to comply with the requirements.

**Subpart F—Transition Policy and Transition Funding****§ 990.220 Purpose.**

This policy is aimed at assisting all PHAs in transitioning to the new funding levels as determined by the formula set forth in this rule. PHAs will

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be subject to a transition funding policy that will either increase or reduce their total operating subsidy for a given year.

**§ 990.225 Transition determination.**

The determination of the amount and period of the transition funding shall be based on the difference in subsidy levels between the formula set forth in this part and the formula in effect prior to implementation of the formula set forth in this part. The difference in subsidy levels will be calculated using FY 2004 data. When actual data are not available for one of the formula components needed to calculate the formula of this part for FY 2004, HUD will use alternate data as a substitute (*e.g.*, unit months available for eligible unit months, etc.) If the difference between these formulas indicates that a PHA shall have its operating subsidy reduced as a result of this formula, the PHA will be subject to a transition policy as indicated in § 990.230. If the difference between these formulas indicates that a PHA will have its operating subsidy increased as a result of this formula, the PHA will be subject to the transition policy as indicated in § 990.235.

[70 FR 54997, Sept. 19, 2005; 70 FR 61367, Oct. 24, 2005]

**§ 990.230 PHAs that will experience a subsidy reduction.**

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 5 percent of the difference between the two funding levels in the first year of implementation of the formula contained in this part;

(2) 24 percent of the difference between the two funding levels in the second year of implementation of the formula contained in this part;

(3) 43 percent of the difference between the two levels in the third year of implementation of the formula contained in this part;

(4) 62 percent of the difference between the two levels in the fourth year of implementation of the formula contained in this part; and

(5) 81 percent of the difference between the two levels in the fifth year of implementation of the formula contained in this part.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the sixth year of implementation of the formula contained in this part.

(c) For example, a PHA has a subsidy reduction from \$1 million, under the formula in effect prior to implementation of the formula contained in this part, to \$900,000, under the formula contained in this part using FY 2004 data. The difference would be calculated at \$100,000 (\$1 million - \$900,000 = \$100,000). In the first year, the subsidy reduction would be limited to \$5,000 (5 percent of the difference). Thus, the PHA would receive an operating subsidy amount pursuant to this rule plus a transition-funding amount of \$95,000 (the \$100,000 difference between the two subsidy amounts minus the \$5,000 reduction limit).

(d) If a PHA can demonstrate a successful conversion to the asset management requirements of subpart H of this part, as determined under paragraph (f) of this section, HUD will discontinue the reduction at the PHA's next subsidy calculation following such demonstration, as reflected in the schedule in paragraph (e) of this section, notwithstanding § 990.290(c).

(e) The schedule for successful demonstration of conversion to asset management for discontinuation of PHA subsidy reduction is reflected in the table below:

**STOP-LOSS DEMONSTRATION TIME LINE AND EFFECTIVE DATES**

Demonstration date by	Applications due	Reduction stopped at	Reduction effective for
September 30, 2007 .....	October 15, 2007 .....	5 percent of the PUM difference.	Calendar Year 2007 and thereafter.
April 1, 2008 .....	April 15, 2008 .....	24 percent of the PUM difference.	Calendar Year 2008 and thereafter.
October 1, 2008 .....	October 15, 2008 .....	43 percent of the PUM difference.	Calendar Year 2009 and thereafter.

STOP-LOSS DEMONSTRATION TIME LINE AND EFFECTIVE DATES—Continued

Demonstration date by	Applications due	Reduction stopped at	Reduction effective for
October 1, 2009 .....	October 15, 2009 .....	62 percent of the PUM difference.	Calendar Year 2010 and thereafter.
October 1, 2010 .....	October 15, 2010 .....	81 percent of the PUM difference.	Calendar Year 2011 and thereafter.

(f)(1) For purposes of this section, compliance with the asset management requirements of subpart H of this part will be based on an independent assessment conducted by a HUD-approved professional familiar with property management practices in the region or state in which the PHA is located.

(2) A PHA must select from a list of HUD-approved professionals to conduct the independent assessment. The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination of compliance with the asset management requirements of subpart H of this part.

(3) Upon completion of the independent assessment, the assessor shall conduct an exit conference with the PHA. In response to the exit conference, the PHA may submit a management response and other pertinent information (including, but not limited to, an additional assessment procured at the PHAs' own expense) within ten working days of the exit conference to be included in the report submitted to HUD.

(4) In the event that HUD is unable to produce a list of independent assessors on a timely basis, the PHA may submit its own demonstration of a successful conversion to asset management directly to HUD for determination of compliance.

(5) The Assistant Secretary for Public and Indian Housing (or designee) shall consider all information submitted and respond with a final determination of compliance within 60 days of the independent assessor's report being submitted to HUD.

[70 FR 54997, Sept. 19, 2005; 70 FR 61367, Oct. 24, 2005, as amended at 72 FR 45874, Aug. 15, 2007]

**§ 990.235 PHAs that will experience a subsidy increase.**

(a) For PHAs that will experience a gain in their operating subsidy, as determined in § 990.225, such increases will have a limit of 50 percent of the difference between the two funding levels in the first year following implementation of the formula contained in this part.

(b) The full amount of the increase in the operating subsidy level shall be realized in the second year following implementation of the formula contained in this part.

(c) For example, a PHA's subsidy increased from \$900,000 under the formula in effect prior to implementation of the formula contained in this part to \$1 million under the formula contained in this part using FY 2004 data. The difference would be calculated at \$100,000 (\$1 million - \$900,000 = \$100,000). In the first year, the subsidy increase would be limited to \$50,000 (50 percent of the difference). Thus, in this example the PHA will receive the operating subsidy amount of this rule minus a transition-funding amount of \$50,000 (the \$100,000 difference between the two subsidy amounts minus the \$50,000 transition amount).

(d) The schedule for a PHA whose subsidy would be increased is reflected in the table below.

Funding period	Increase limited to
Year 1 .....	50 percent of the difference.
Year 2 .....	Full increase reached.

[70 FR 54997, Sept. 19, 2005; 70 FR 61367, Oct. 24, 2005]

**Subpart G—Appeals**

**§ 990.240 General.**

(a) PHAs will be provided opportunities for appeals. HUD will provide up to



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a two percent hold-back of the Operating Fund appropriation for FY 2006 and FY 2007. HUD will use the hold-back amount to fund appeals that are filed during each of these fiscal years. Hold-back funds not utilized will be added back to the formula within each of the affected fiscal years.

(b) Appeals are voluntary and must cover an entire portfolio, not single projects. However, the Assistant Secretary for Public and Indian Housing (or designee) has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units.

### § 990.245 Types of appeals.

(a) *Streamlined appeal.* This appeal would demonstrate that the application of a specific Operating Fund formula component has a blatant and objective flaw.

(b) *Appeal of formula income for economic hardship.* After a PHA's formula income has been frozen, the PHA can appeal to have its formula income adjusted to reflect a severe local economic hardship that is impacting the PHA's ability to maintain rental and other revenue.

(c) *Appeal for specific local conditions.* This appeal would be based on demonstrations that the model's predictions are not reliable because of specific local conditions. To be eligible, the affected PHA must demonstrate a variance of ten percent or greater in its PEL.

(d) *Appeal for changing market conditions.* A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions, after a PHA has taken aggressive marketing and outreach measures to rent these units. For example, a PHA could appeal if it is located in an area experiencing population loss or economic dislocations that faces a lack of demand for housing in the foreseeable future.

(e) *Appeal to substitute actual project cost data.* A PHA may appeal its PEL if it can produce actual project cost data derived from actual asset management, as outlined in subpart H of this part, for a period of at least two years.

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### § 990.250 Requirements for certain appeals.

(a) Appeals under § 990.245 (a) and (c) must be submitted once annually. Appeals under § 990.245 (a) and (c) must be submitted for new projects entering a PHA's inventory within one year of the applicable Date of Full Availability (DOFA).

(b) Appeals under § 990.245 (c) and (e) are subject to the following requirements:

(1) The PHA is required to acquire an independent cost assessment of its projects;

(2) The cost of services for the independent cost assessment is to be paid by the appellant PHA;

(3) The assessment is to be reviewed by a professional familiar with property management practices and costs in the region or state in which the appealing PHA is located. This professional is to be procured by HUD. The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination; and

(4) If the appeal is granted, the PHA agrees to be bound to the independent cost assessment regardless of new funding levels.

## Subpart H—Asset Management

### § 990.255 Overview.

(a) PHAs shall manage their properties according to an asset management model, consistent with the management norms in the broader multi-family management industry. PHAs shall also implement project-based management, project-based budgeting, and project-based accounting, which are essential components of asset management. The goals of asset management are to:

(1) Improve the operational efficiency and effectiveness of managing public housing assets;

(2) Better preserve and protect each asset;

(3) Provide appropriate mechanisms for monitoring performance at the property level; and

(4) Facilitate future investment and reinvestment in public housing by public and private sector entities.

(b) HUD recognizes that appropriate changes in its regulatory and monitoring programs may be needed to support PHAs to undertake the goals identified in paragraph (a) of this section.

**§ 990.260 Applicability.**

(a) PHAs that own and operate 250 or more dwelling rental units under title I of the 1937 Act, including units managed by a third-party entity (for example, a resident management corporation) but excluding section 8 units, are required to operate using an asset management model consistent with this subpart.

(b) PHAs that own and operate fewer than 250 dwelling rental units may treat their entire portfolio as a single project. However, if a PHA selects this option, it will not receive the add-on for the asset management fee described in § 990.190(f).

**§ 990.265 Identification of projects.**

For purposes of this subpart, project means a public housing building or set of buildings grouped for the purpose of management. A project may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project under the ACC. HUD shall retain the right to disapprove of a PHA's designation of a project. PHAs may group up to 250 scattered-site dwelling rental units into a single project.

**§ 990.270 Asset management.**

As owners, PHAs have asset management responsibilities that are above and beyond property management activities. These responsibilities include decision-making on topics such as long-term capital planning and allocation, the setting of ceiling or flat rents, review of financial information and physical stock, property management performance, long-term viability of properties, property repositioning and replacement strategies, risk management responsibilities pertaining to regulatory compliance, and those decisions otherwise consistent with the PHA's ACC responsibilities, as appropriate.

**§ 990.275 Project-based management (PBM).**

PBM is the provision of property-based management services that is tailored to the unique needs of each property, given the resources available to that property. These property management services include, but are not limited to, marketing, leasing, resident services, routine and preventive maintenance, lease enforcement, protective services, and other tasks associated with the day-to-day operation of rental housing at the project level. Under PBM, these property management services are arranged, coordinated, or overseen by management personnel who have been assigned responsibility for the day-to-day operation of that property and who are charged with direct oversight of operations of that property. Property management services may be arranged or provided centrally; however, in those cases in which property management services are arranged or provided centrally, the arrangement or provision of these services must be done in the best interests of the property, considering such factors as cost and responsiveness.

**§ 990.280 Project-based budgeting and accounting.**

(a) All PHAs covered by this subpart shall develop and maintain a system of budgeting and accounting for each project in a manner that allows for analysis of the actual revenues and expenses associated with each property. Project-based budgeting and accounting will be applied to all programs and revenue sources that support projects under an ACC (*e.g.*, the Operating Fund, the Capital Fund, etc.).

(b)(1) Financial information to be budgeted and accounted for at a project level shall include all data needed to complete project-based financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP), including revenues, expenses, assets, liabilities, and equity data. The PHA shall also maintain all records to support those financial transactions. At the time of conversion to project-based accounting, a PHA shall apportion its

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assets, liabilities, and equity to its respective projects and HUD-accepted central office cost centers.

(2) Provided that the PHA complies with GAAP and other associated laws and regulations pertaining to financial management (*e.g.*, 2 CFR part 200) it shall have the maximum amount of responsibility and flexibility in implementing project-based accounting.

(3) Project-specific operating income shall include, but is not limited to, such items as project-specific operating subsidy, dwelling and non-dwelling rental income, excess utilities income, and other PHA or HUD-identified income that is project-specific for management purposes.

(4) Project-specific operating expenses shall include, but are not limited to, direct administrative costs, utilities costs, maintenance costs, tenant services, protective services, general expenses, non-routine or capital expenses, and other PHA or HUD-identified costs which are project-specific for management purposes. Project-specific operating costs also shall include a property management fee charged to each project that is used to fund operations of the central office. Amounts that can be charged to each project for the property management fee must be reasonable. If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company and the fee that is reasonable to fund operations of the central office and other eligible purposes.

(5) If the project has excess cash flow available after meeting all reasonable operating needs of the property, the PHA may use this excess cash flow for the following purposes:

(i) Fungibility between projects as provided for in § 990.205.

(ii) Charging each project a reasonable asset management fee that may also be used to fund operations of the central office. However, this asset management fee may be charged only if the PHA performs all asset management activities described in this subpart (including project-based management, budgeting, and accounting). Asset man-

agement fees are considered a direct expense.

(iii) Other eligible purposes.

(c) In addition to project-specific records, PHAs may establish central office cost centers to account for non-project specific costs (*e.g.*, human resources, Executive Director's office, etc.). These costs shall be funded from the property-management fees received from each property, and from the asset management fees to the extent these are available.

(d) In the case where a PHA chooses to centralize functions that directly support a project (*e.g.*, central maintenance), it must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable.

[70 FR 54997, Sept. 19, 2005, as amended at 80 FR 75943, Dec. 7, 2015]

**§ 990.285 Records and reports.**

(a) Each PHA shall maintain project-based budgets and fiscal year-end financial statements prepared in accordance with GAAP and shall make these budgets and financial statements available for review upon request by interested members of the public.

(b) Each PHA shall distribute the project-based budgets and year-end financial statements to the Chairman and to each member of the PHA Board of Commissioners, and to such other state and local public officials as HUD may specify.

(c) Some or all of the project-based budgets and financial statements and information shall be required to be submitted to HUD in a manner and time prescribed by HUD.

**§ 990.290 Compliance with asset management requirements.**

(a) A PHA is considered in compliance with asset management requirements if it can demonstrate substantially, as described in paragraph (b) of this section, that it is managing according to this subpart.

(b) Demonstration of compliance with asset management will be based on an independent assessment.

(1) The assessment is to be conducted by a professional familiar with property management practices and costs

in the region or state in which the PHA is located. This professional is to be procured by HUD.

(2) The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing (or designee) for final determination of compliance to asset management.

(c) Upon HUD's determination of successful compliance with asset management, PHAs will then be funded based on this information pursuant to § 990.165(i).

(d) PHAs must be in compliance with the project-based accounting and budgeting requirements in this subpart by FY 2007. PHAs must be in compliance with the remainder of the components of asset management by FY 2011.

**Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)**

**§ 990.295 Resident Management Corporation operating subsidy.**

(a) *General.* This part applies to all projects managed by a Resident Management Corporation (RMC), including a direct funded RMC.

(b) *Operating subsidy.* Subject to paragraphs (c) and (d) of this section, the amount of operating subsidy that a PHA or HUD provides a project managed by an RMC shall not be reduced during the three-year period beginning on the date the RMC first assumes management responsibility for the project.

(c) *Change factors.* The operating subsidy for an RMC-managed project shall reflect changes in inflation, utility rates, and consumption, as well as changes in the number of units in the resident managed project.

(d) *Exclusion of increased income.* Any increased income directly generated by activities by the RMC or facilities operated by the RMC shall be excluded from the calculation of the operating subsidy.

(e) *Exclusion of technical assistance.* Any technical assistance the PHA provides to the RMC will not be included for purposes of determining the amount of funds provided to a project under paragraph (b) of this section.

(f) The following conditions may not affect the amounts to be provided under this part to a project managed by an RMC:

(1) *Income reduction.* Any reduction in the subsidy or total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA; and

(2) *Change in total income.* Any change in the total income of a PHA that occurs as a result of project-specific characteristics when these characteristics are not shared by the project managed by the RMC.

(g) *Other project income.* In addition to the operating subsidy calculated in accordance with this part and the amount of income derived from the project (from sources such as rents and charges), the management contract between the PHA and the RMC may specify that income be provided to the project from other legally available sources of PHA income.

**§ 990.300 Preparation of operating budget.**

(a) The RMC and the PHA must submit operating budgets and calculations of operating subsidy to HUD for approval in accordance with § 990.200. The budget will reflect all project expenditures and will identify the expenditures related to the responsibilities of the RMC and the expenditures that are related to the functions that the PHA will continue to perform.

(b) For each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the RMC, the PHA will transfer into a sub-account of the operating reserve of the PHA an operating reserve for the RMC project. When all maintenance responsibilities for a resident-managed project are the responsibility of the RMC, the amount of the reserve made available to a project under this subpart will be the per-unit cost amount available to the PHA operating reserve, excluding all inventories, prepaids, and receivables at the end of the PHA fiscal year preceding implementation, multiplied by the number of units in the project operated. When some, but not all, maintenance responsibilities are vested in the

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RMC, the management contract between the PHA and RMC may provide for an appropriately reduced portion of the operating reserve to be transferred into the RMC's sub-account.

(c) The RMC's use of the operating reserve is subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve must be for eligible expenditures that are incorporated into an operating budget subject to approval by HUD.

(d) Investment of funds held in the reserve will be in accordance with HUD regulations and guidance.

**§ 990.305 Retention of excess revenues.**

(a) Any income generated by an RMC that exceeds the income estimated for the income categories specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a PHA under this part; and

(2) The funds the PHA provides to the RMC.

(b) The RMC's management contract must specify the amount of income that is expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under this part, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for adjustment of anticipated project income between the RMC and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the management contract.

(c) Any revenues retained by an RMC under this section may be used only for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the RMC will not be eligible for payment of operating subsidy.

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**Subpart J—Financial Management Systems, Monitoring, and Reporting**

**§ 990.310 Purpose—General policy on financial management, monitoring and reporting.**

All PHA financial management systems, reporting, and monitoring of program performance and financial reporting shall be in compliance with the requirements of 2 CFR part 200. Certain HUD requirements provide exceptions for additional specialized procedures that are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the 1937 Act and the ACC between each PHA and HUD.

[70 FR 54997, Sept. 19, 2005, as amended at 80 FR 75943, Dec. 7, 2015]

**§ 990.315 Submission and approval of operating budgets.**

(a) Required documentation:

(1) Prior to the beginning of its fiscal year, a PHA shall prepare an operating budget in a manner prescribed by HUD. The PHA's Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to HUD, in a time and manner prescribed by HUD, the approved Board resolution.

(2) HUD may direct the PHA to submit its complete operating budget with detailed supporting information and the Board resolution if the PHA has breached the ACC contract, or for other reasons, which, in HUD's determination, threaten the PHA's future serviceability, efficiency, economy, or stability. When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget with detailed supporting information to HUD for review and approval.

(b) If HUD finds that an operating budget is incomplete, inaccurate, includes illegal or ineligible expenditures, contains mathematical errors or errors in the application of accounting procedures, or is otherwise unacceptable, HUD may, at any time, require

the PHA to submit additional or revised information regarding the budget or revised budget.

**§ 990.320 Audits.**

All PHAs that receive financial assistance under this part shall submit an acceptable audit and comply with the audit requirements in 2 CFR part 200, subpart F.

[70 FR 54997, Sept. 19, 2005, as amended at 80 FR 75943, Dec. 7, 2015]

**§ 990.325 Record retention requirements.**

The PHA shall retain all documents related to all financial management and activities funded under the Operating Fund for a period of five fiscal years after the fiscal year in which the funds were received.

**PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES**

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