



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

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

**Notice** PIH 2007- 7

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Cross Reference:

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**SUBJECT: Guidance on Appeals under Subpart G of the Revisions to the Public Housing Operating Fund Program, Final Rule, Published in the Federal Register on September 19, 2005 (79 FR 54983)**

**1. Purpose**

This notice provides guidance to public housing agencies (PHAs) and field offices on the grounds for appeals and the procedures for submitting appeals under the final rule.

**2. Background**

On September 19, 2005, HUD published a final rule in the Federal Register, Revisions to the Public Housing Operating Fund Program (79 FR 54983), adopting a new formula for determining the payment of operating subsidy to PHAs. A technical correction notice, revising certain implementation dates, was published in the Federal Register on October 24, 2005 (70 FR 61366). To assist PHAs in the transition to the new Operating Fund formula and to ensure that accurate data is used in the formula calculations, the final rule establishes five specific grounds for appeal of subsidy amounts, along with requirements applicable to each appeal.

**3. Types of Appeals**

Section 990.245 of the final rule establishes five types of appeals:

- **Streamlined appeal.** This appeal requires the PHA to demonstrate that there is a blatant and objective flaw in the application of a specific Operating Fund formula component. An example would be the application of an incorrect geographic coefficient because the PHA is shown as being in Springfield, IL, when in fact the PHA is located in Springfield, MA.
- **Appeal of formula income for economic hardship.** A PHA may appeal to have its formula income adjusted from the level frozen in 2004 (in accordance with § 990.195(c) of the final rule) in order to reflect a severe local economic hardship that is impacting the PHA's ability to maintain rental and other revenue. An example of an appeal of formula

income for economic hardship would be the closure of a major local employer that has affected tenant incomes and therefore tenant contribution to rent.

- **Appeal for specific local conditions.** An appeal for specific local conditions requires the PHA to demonstrate that the model-generated Project Expense Levels (PELs) fail to reflect local conditions. To be eligible for a change in subsidy for an appeal for specific local conditions, the PHA must demonstrate a variance of ten percent or greater in its PEL. For this type of an appeal, the PHA must show verifiable proof through the use of an independent assessor that the formula generated PEL is not accurate for that market, based on expenses at comparable properties where the PHA is located.
- **Appeal for changing market conditions.** A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions after the PHA has taken aggressive marketing and outreach measures to rent these units. The vacancies cannot be the result of action or inaction by PHA management. For example, a PHA that is located in an area experiencing rapid population loss or economic dislocation may face a decrease in demand for its units, even after the PHA has taken aggressive marketing and outreach measures.
- **Appeal to substitute actual project cost data.** A PHA may appeal to HUD to change its PEL when it can produce project cost data, derived from actual asset management as outlined in subpart H of the final rule, for a period of at least two years. In this instance, the PHA must also submit a cost assessment conducted by an independent assessor.

#### 4. Special Requirements for Appeals

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

**Independent assessments.** For appeals for specific local conditions and appeals to substitute actual project cost data, the PHA is required to acquire, at its own expense, an independent cost assessment of its projects. The assessor must have appropriate knowledge of multifamily operating costs in the local market.

The assessor must complete an individual cost assessment on each public housing project. PHAs with more than 5,000 units may request to the Assistant Secretary that assessments be performed on less than the entire portfolio.

#### 5. Processing Requirements, Calendar Year (CY) 2007

For CY 2007, PHAs must submit their appeals by July 15, 2007. Annually, HUD will publish the date for submission of appeals. All appeals must be submitted in writing.

Appeals for formula income and changing market conditions must be sent directly to the PHA's field office. All other appeals should be submitted to: U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center, Financial Management Division, 550 12<sup>th</sup> St., SW, Washington, D.C., 20410. Contact person: Andrea Williamson (telephone 202-475-8607). A copy should also be submitted to the PHA's field office.

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

For CY 2007, it is expected that HUD will issue final appeal decisions by September 1, 2007. If an appeal is granted, HUD will adjust the PHA's subsidy by the appropriate amount retroactive to the beginning of the year.

## **6. Information to be Included with the Appeal**

- **Streamlined appeal.** The PHA should describe the reason for the streamlined appeal and include all supporting documentation.
- **Appeal of formula income for economic hardship.** The PHA shall provide information, along with any supporting documentation, to support that the severe economic hardship has impacted the PHA. Note that changes in tenant rent due to a change in PHA-paid utilities to tenant-paid utilities or vice-versa is not considered an economic hardship and, therefore, does not qualify for an appeal under § 990.195(c) of the final rule.
- **Appeal for specific local conditions.** The PHA must submit an independent assessment from an assessor procured by the PHA as described in Item 4, above, for each project.
- **Appeal for changing market conditions.** The PHA must demonstrate how the local market conditions have impacted vacancies and what marketing and outreach measures have been undertaken by the PHA to date. Note that the impacted vacancies must relate to the 12-month reporting period from July 1, 2005, to June 30, 2006, used for CY 2007 processing. Additionally, if a PHA is requesting an appeal for changing market conditions for a particular project, but not others, it must indicate why the condition affects just one project and not the entire portfolio.
- **Appeal to substitute actual project cost data.** The PHA must provide two years of actual cost data and show that those costs are not greater than expenses at comparable properties in their market. In addition, the PHA must submit an independent assessment from an assessor procured by the PHA as described in Item 4, above. The PHA will also be required to demonstrate successful conversion to asset management, as provided under § 990.290 of the final rule.

## 7. **Paperwork Reduction**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3520) and assigned OMB approval number 2577-0246. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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Assistant Secretary for Public and Indian Housing