



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

Special Attention of:

Public Housing Agencies
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

Notice PIH 2008- 31 (HA)

Issued: July 17, 2008

Expires: July 31, 2009

Cross Reference: PIH Notice 2006-14;
PIH Notice 2006-35; PIH Notice 2007-9;
PIH Notice 2007-16

Subject: Operating Fund Program: Guidance on Demonstration of Successful Conversion to Asset Management to Discontinue the Reduction of Operating Subsidy, Year 3 Applications

1. Purpose

This notice provides information for public housing agencies (PHAs) that wish to submit documentation of successful conversion to asset management in order to discontinue their reduction in operating subsidy under the Operating Fund Program regulations (24 CFR part 990), commonly referred to as the “stop-loss” provision. This notice applies only to PHAs that: (1) lose funding under the new formula; and (2) wish to submit documentation in accordance with the requirements for Year 3.

24 CFR 990.230(d) states:

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

2. Deadlines

On June 18, 2007, HUD posted the following revised deadlines in PIH Notice 2007-16:

Stop-Loss Demonstration Time Line and Effective Dates				
Application Year	Demonstration Date By	Applications Due	Reduction Stopped At	Reduction Effective For
3	October 1, 2008	October 15, 2008	43% of the PUM difference.	Calendar Year 2009 and thereafter
4	October 1, 2009	October 15, 2009	62% of the PUM difference.	Calendar Year 2010 and thereafter
5	October 1, 2010	October 15, 2010	81% of the PUM difference.	Calendar Year 2011 and thereafter

For example, a PHA receives \$55.00 per unit month (PUM) less in FFY 2004 under the final rule than it received under the interim rule. If this PHA successfully applies under the Year 3 application deadline, its reduction in subsidy will be stopped at \$23.65 PUM (43 percent of the difference between the two operating subsidy levels). For subsidy calculation purposes, a transition amount of \$31.35 PUM (\$55.00 PUM less \$23.65 PUM) will be multiplied by eligible unit months and added to the lower operating subsidy level under the new formula. This computation will occur each calendar year that the PHA remains in compliance with asset management or until such time as a new formula is developed and implemented.

3. Criteria for Successful Conversion

For Year 3 stop-loss submissions, PHAs must fully meet the seven criteria in Attachment A. A new Stop-Loss Submission Kit for Year 3 will soon be posted on HUD's Asset Management website at:

<http://www.hud.gov/offices/pih/programs/ph/am/stoploss.cfm>

Although section 225 of Title II of Division K of the fiscal year 2008 Appropriations Act (and § 990.260(b) of Title 24 of the CFR) exempts PHAs with 400 or fewer public housing units (and less than 250 public housing units) from transitioning to asset management, PHAs may only qualify for stop-loss if they comply with asset management and group their projects in accordance with Item 4, Guidelines for Determining Projects, in PIH Notice 2006-10, Identification of Projects for Asset Management.

4. Independent Assessor

HUD will not produce a list of independent assessors for Year 3 applications. Consequently, in addition to the materials included in the submission kit, a PHA may choose, but is not required, to submit its own demonstration of successful conversion to asset management.

5. Fee Reasonableness

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

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

In accordance with PIH Notice 2008-16, PHAs that implement Section 226 of Title K of the 2008 Appropriations Act, relating to the use of Capital Fund Program proceeds for central office costs, must maintain an overhead allocation system. Stop-loss agencies that have implemented section 226 will report the amount of overhead allocated to each project. In such cases, in lieu of determining the reasonableness of the “management fee,” HUD will compare the amount of allocated overhead with the applicable management fees, bookkeeping fees, and asset management fees.

6. Continued Eligibility

PHAs must maintain their compliance with the asset management requirements of the Operating Fund Program to continue to have their losses stopped. Any PHA found not compliant with these and future requirements will have its subsidy returned to pre-stop loss levels the next calendar year.

7. Submissions

Stop-loss packages may be submitted at any time prior to the deadline. Submit stop-loss packages to: Andrea Williamson, U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center, Financial Management Division, 550 12th Street, SW, Suite 200, Washington, DC 20410. Submission packages must be post-marked, or otherwise received, by the deadline.

Upon receipt of a stop-loss package, HUD will review for completeness. If additional information is needed, HUD will set the maximum number of days the package will be held before the application is rejected for non-compliance with Attachment A.

HUD may require an on-site assessment and will provide notice of such to the PHA. At the conclusion of any on-site assessment, HUD (or its agent) will hold an exit conference with the PHA to discuss observations and provide the PHA with an opportunity to respond.

Following completion of HUD’s review of an application, including any on-site assessments, HUD will provide a written report of its assessment and an opportunity for the PHA to respond. The Assistant Secretary for Public and Indian Housing (or designee) shall consider all information submitted by the PHA and respond with a final determination of compliance.

A PHA’s failure to satisfy any one of the seven criteria described in Attachment A is sufficient grounds to deny finding successful conversion to asset management. When it is apparent that the PHA will fail one or more criteria, HUD can proceed with a limited review of the remaining criteria.

8. Paperwork Reduction

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

/s/

Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

Attachment A: Criteria for Successful Conversion Under Year 3 Deadline

Criteria	Elements
1. Project-Based Budgeting and Accounting	<ul style="list-style-type: none"> a. The PHA's Board has approved the operating budget for each project that reasonably reflects the anticipated revenues and expenses for the project, including those items listed in 1(d) below. b. These project-based budgets must be inclusive of all central office charges, including management fees, fees for centralized services, etc. c. The PHA (or its management agent) produces monthly operating statements for each project that contain the revenues and expenses of each project compared against budgeted levels, including all fees and charges from the central office cost center. d. Project-specific balance sheets are required for all project operating statements and must be in compliance with applicable fungibility provisions under PIH Notice 2007-9. e. Proceeds from the Capital Fund Program, energy performance contracts, and other sources to support project operations must also be reflected in the operating statements for each project. (Capital items funded from the Capital Fund Program are not required to be included in these project-specific operating statements.) f. The operating statements must reasonably represent the financial performance of each project and must be inclusive of all central office charges, including management fees, fees for centralized services, etc. g. The PHA maintains all records to support financial transactions.
2. Project-Based Management	<p>Property management services are arranged or provided in the best interest of the project, considering such factors as needs, cost, and responsiveness, relative to local market standards.</p>
3. Central Office Cost Center	<ul style="list-style-type: none"> a. All central office fees (property management, asset management, bookkeeping, etc.) must be reasonable, as defined under Item 5 of this notice. b. The central office cost center must operate on the allowable fees and other permitted reimbursements from its Public Housing and Housing Choice Voucher Programs, as well as revenue generated from non-public housing programs. c. Solely for the purposes of stop-loss, a PHA may not fund the operation of the central office cost center with: (1) proceeds from the sale of assets acquired with public housing funds; (2) amounts from the Capital Fund Program other than those permitted for administration/planning (for example, an agency requesting stop-loss cannot use "Management Improvement" funds to pay for general accounting staff); or (3) funds received from state or local governments for the purpose of supporting operations of the center office cost center, i.e., non fee-income.

Criteria	Elements
4. Centralized Services	<ul style="list-style-type: none"> a. Centralized functions that directly support projects must be funded using a fee-for-service approach or through other allowable charge-backs. b. Each project is charged for actual services received. c. Centralized services are consistent with the needs of, and are in the best interests of, the project. d. Centralized service charges must be reasonable based on demonstrated data from the local market.
5. Review of Project Performance	<ul style="list-style-type: none"> a. The PHA systematically reviews information regarding the financial, physical, and management performance of each project, including utility consumption, and identifies non-performing properties. For the purposes of Year 3 applications, a non-performing property is one that: (1) receives a REAC physical inspection score of less than 70; (2) has significant crime and drug problems (defined as incidence of Part I and Part II Crimes, in accordance with Uniform Crime Reporting, that exceed the surrounding community by 120%); (3) is below 95% occupancy; (4) has rent arrears that exceed 7% of monthly rent roll; (5) would receive a “D” or lower score under the Public Housing Assessment System (PHAS) for the management operations sub-indicators related to vacant unit turnaround and work orders (emergency and non-emergency); (6) has utility consumption exceeding 120% of the agency average for properties of similar type; or (7) has other major management problems. b. For any projects identified as non-performing, the PHA shall have a management plan that includes a set of recommendations and measurable goals that effectively address the area(s) of non-performance.
6. Long-term Capital Planning	<ul style="list-style-type: none"> a. The PHA has a physical needs assessment for each project. b. The PHA has a five-year capital plan for each project that is realistic in terms of expected revenue sources, market, tenancy, and project needs. c. The PHA has demonstrated a commitment to an annual reduction in energy and utility consumption through a plan, the use of HUD’s incentives, or the use of Energy Star equipment for retrofits.
7. Risk Management Responsibilities Related to Regulatory Compliance	<p>In accordance with § 990.270, asset management includes risk management responsibilities related to regulatory compliance. A PHA is not properly carrying out its risk management responsibilities related to regulatory compliance if it:</p> <ul style="list-style-type: none"> a. Is designated troubled under the PHAS for physical condition, financial condition, management operations, or the Capital Fund Program; b. Has any outstanding FHEO compliance findings or a Voluntary Compliance Agreement (VCA) that have not been implemented; c. Does not have a current energy audit; d. Has any outstanding IG audit findings greater than six months old

Criteria	Elements
	<p>without demonstrated progress being made;</p> <ul style="list-style-type: none"> e. Is not in compliance with Admissions and Continued Occupancy Policies (ACOP) and other related occupancy directives; f. Is not making satisfactory progress under Rental Housing Integrity Improvement Project/Rental Integrity Monitoring (RHIIPS/RIM) Corrective Action Plans (e.g., RIM review findings with open improper rent collections/payment findings); g. Is not in compliance with PIH Notice 2005-17, Reporting Requirements for the Family Report (form HUD-50058) to the Public Housing Information Center (PIC). PHAs are considered in compliance with form HUD-50058 reporting requirements if their public housing reporting rate, as measured by the PIC Delinquency Report, is at or above 95% at the time of their most recent assessment period; h. Is not meeting the statutory Capital Fund Program obligation and expenditure deadlines; or i. Has any other major compliance deficiency. <p>HUD may consider a PHA's progress in addressing the above compliance issues and other extenuating circumstances.</p>