

levels in accordance with § 990.110(b), which covers investment income.

(Approved by the Office of Management and Budget under control number 2577-0066. Paragraphs (e) and (f) have been approved by the Office of Management and Budget under control number 2577-007)

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EFFECTIVE DATE NOTE: At 61 FR 51183, Sept. 30, 1996, § 990.109(b) was amended. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. When approval is obtained, HUD will publish notice of the effective date in the FEDERAL REGISTER.

#### § 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level—(1) Eligibility.* A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the formula for the first time, may, during its first budget year under PFS, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a

request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under PFS. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to estimated investment income.* A PHA that had an estimated average cash balance of at least \$20,000 must submit a year-end adjustment to the estimated amount of investment income that was used to determine subsidy eligibility at the beginning of the PHA's fiscal year. The amount of the adjustment will be the difference between the estimate and a Target Investment Income amount based on the actual average yield on 91-day Treasury bills for the PHA's fiscal year being adjusted and the actual average cash balance available for investment during the PHA's fiscal year, computed in accordance with HUD requirements. HUD will provide the PHA with the actual average yield on 91-day Treasury bills for the PHA's fiscal year. Failure of a PHA to submit the required adjustment of investment income by the date due may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until the adjustment is received.

(c) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§ 990.108(a)), must submit a year-end adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This request shall be submitted to the HUD Field Office by a deadline established by HUD, which

will be during the PHA fiscal year following the PHA fiscal year for which an operating subsidy was received by the PHA, exclusive of a subsidy solely for independent audit costs. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies until it is received. Adjustments under this subsection normally will be made in the PHA fiscal year following the year for which the adjustment is applicable, except as provided in paragraph (c)(5) of this section or unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates to the extent funded by the operating subsidy will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) *Consumption.* (i) Generally, 50 percent of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the PHA; 50 percent will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(f)(1), the PHA may retain 100 percent of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The decreased consumption is to be deter-

mined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50 percent of the total savings from decreased consumption to cover training of PHA employees, counseling of tenants, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) An increase in the Utilities Expense Level attributable to increased consumption will be fully funded by residual receipts after provision for reserves, if available. If residual receipts are not available and the increase would result in a reduction of the operating reserve below the authorized maximum, fifty percent of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be funded by HUD by adjusting future operating subsidy payments.

(3) *Emergency adjustments.* In emergency cases, where a PHA establishes to HUD's satisfaction that a severe financial crisis would result from a utility rate increase, an adjustment covering only the rate increase may be submitted to HUD at any time during the PHA's Current Budget Year. Unlike the adjustments mentioned in paragraphs (c)(1) and (c)(2) of this section, this adjustment shall be submitted to the HUD Field Office by revision of the original submission of the estimated Utility Expense Level for the fiscal year to be adjusted.

(4) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(d) *Requests for adjustments to projected average monthly dwelling rental income.* Requests for adjustments to projected average monthly dwelling rental income may be made as follows:

(1) *Criteria for granting request.* A PHA may request an adjustment to projected average monthly dwelling rental income under PFS if the PHA can establish to HUD's satisfaction that the projected amount computed under § 990.109 was not attained because of

circumstances beyond the control of the PHA. The PHA must also demonstrate to HUD's satisfaction that it has established and is effectively implementing tenant selection criteria in compliance with HUD requirements. HUD shall have complete discretion to approve completely, approve in part or deny any requested adjustment to projected average monthly dwelling rental income.

(2) *Procedure.* A request for an adjustment under this subsection shall be submitted to the HUD Field Office by a deadline established by HUD, which will be within twelve months following the PHA's fiscal year being adjusted. In emergency cases, however, where a PHA establishes to HUD's satisfaction that decreased rental income would result in a severe financial crisis, a request for adjustments may be submitted to HUD at an earlier time.

(e) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year (and a maximum contract period of 12 years).

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (c)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (e) 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.

(3) 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 12-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 only be extended to accommodate payment to the contractor and associated direct costs.

(f) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. Normally adjustments shall be made in total in the PHA fiscal year in which the needed adjustment is determined; however, if a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

(Approved by the Office of Management and Budget under control numbers 2577-0026, 2577-0029, 2577-0071, and 2577-0125)

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**§ 990.111 Submission and approval of operating subsidy calculations and budgets.**

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of