

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 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.

§ 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;