



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

Special Attention of: Section 8 Public
Housing Agencies; HUD Office of
Public Housing Directors; Section 8
Financial Management Center

Notice PIH 2011-28 (HA)

Issued: May 27, 2011

Expires: Effective until amended,
superseded, or rescinded

Cross References:

PIH 2009-44 (HA)

PIH 2008-43 (HA)

PIH 2005-9 (HA)

PIH 2006-32 (HA)

Subject: Cost- Savings Measures in the Housing Choice Voucher (HCV) Program

1. Purpose. This notice extends and revises Notice PIH 2009-44 which provided: (1) guidance on actions public housing agencies (PHA) may take to address financial shortfalls by reducing costs in the HCV program; and (2) information on the circumstances under which a PHA may deny a move under 24 CFR § 982.314(e)(1) or terminate a housing assistance payments (HAP) contract under 24 CFR §982.454 as a result of insufficient funding. The revisions to Notice PIH 2009-44 are bolded.

2. Background. Every year HUD receives annual appropriations from Congress. HUD implements the Appropriations Act and obligates funds to PHAs in accordance with the formula required by the Appropriations Act. PHAs must manage and monitor their programs within the amounts allocated for the calendar year (CY) to ensure that costs remain within appropriated amounts (including unspent funds from prior years, i.e., the Net Restricted Assets – HAP Equity Account (NRA)).

Specifically, PHAs monitor monthly per unit HAP costs, the number of leased units and attrition rates. If it appears that a PHA will have insufficient funds to support families through the end of the CY, then cost-savings measures may be taken. In determining which actions to take, a PHA should carefully consider the impact such actions will have on program applicants and participants. **HUD shall provide support and guidance as needed to assist the PHA in making sound cost-savings determinations. PHAs should contact their local field offices for such assistance.**

In any given fiscal or calendar year a PHA is not required or expected to lease up to its authorized baseline units contracted under a Consolidated Annual Contributions Contract (CACC) if it does not have the funding to do so. Under the Section Eight Management Assessment Program (SEMAP) the score for the lease-up indicator is determined by taking the higher of the percent of the units leased or the percent of allocated budget

authority expended. There is no penalty for not maximizing the percentage of baseline units leased if the PHA does not have sufficient funding to do so (see 24 CFR § 985.3(n) (2) (ii)). Note, however, that since PHA administrative fees are based on the number of authorized units under HAP, PHAs that lease a greater number of their authorized vouchers receive more administrative fees.

3. PHA Plan Requirements. Any cost-savings measures referenced in this notice that constitute a significant amendment or modification as defined in 24 CFR § 903.7(r)(2) are subject to the requirements of §§ 903.13, 903.15 and 903.17, which include a public hearing and comment period. **However, not all cost-savings measures constitute a significant amendment; that determination must be made by the PHA.**

4. PHA Actions to Reduce HCV Program Costs. Some of the actions noted below relate to program compliance issues (e.g., ensuring rents are reasonable, incomes are verified correctly, and utility allowances are accurate). Although PHAs must comply with such requirements, regardless of whether the PHA is experiencing financial difficulties, this notice serves as a reminder of more proactive steps PHAs may take within the context of these requirements to better manage HAP expenses.

Cost-savings measures are optional and have varying degrees of impact on applicant and participant families. The impact of each action should be considered prior to implementation. If an action adversely impacts program participants, particularly a family's rent burden, **HUD strongly recommends that the PHA first consider taking** other actions having no impact or less impact on families, including the use of administrative fee reserves to pay for HAP expenses.

The following is a non-exclusive list of PHA cost-savings actions.

- a. Family Income Matching/Verification and Other Anti-Fraud Efforts.** PHAs should accelerate efforts concerning income matching and income verification. PHAs should notify families that enforcement action could be taken where underreporting of income is discovered. **Also, the PHA may want to consider which actions should lead to a repayment agreement and which should lead to termination – particularly where a family may have intentionally misrepresented its income. PHAs may also take action to collect money owed after the family has been terminated from the program.**
- b. Ensuring Reasonable Rents.** PHAs do not have to wait until the HAP contract anniversary date to review owner rents and reduce them if warranted. The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units in accordance with the regulation at 24 CFR § 982.507(b) and the HAP contract. The PHA should ensure that owner rents do not exceed amounts charged for unassisted units in the same building or complex. The initial rent and all rent increases must comply with any State or local rent control limits. Further, any owner leasing promotions for unassisted tenants (e.g., the initial two months of

occupancy are "rent free") must be taken into consideration in determining rent reasonableness. **In regard to reasonable rents for certain types of federally subsidized projects, please reference Notice PIH 2011-1.**

In accordance with the HAP contract, the PHA must provide written notice to owners before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to owner is not reasonable as most recently determined by the PHA, the owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a HCV to find a new unit. (Movers, like new participants, are subject to a PHA's current payment and occupancy standards.)

Even if an owner's rent is reasonable, a PHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help the PHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures. **However, a PHA may not "freeze" rents due to insufficient funding when an owner requests an increase, if the PHA determines the increased rent to be reasonable, and the owner does not agree to defer a rent increase.**

- c. **Ensuring Accurate Utility Allowances.** The PHA may always review its utility allowances more than annually to determine if they are too high. Changes in utility allowances may be implemented immediately, but not later than the next regularly scheduled reexamination of family income. **Please note that in accordance with 24 CFR § 982.517(c), a utility allowance category must only be changed if there is an increase of ten percent or more in the utility rate since the last time the utility allowance schedule was revised.**
- d. **Portability Absorption.** A receiving PHA can always immediately stop absorbing new portable families and elect to bill the initial PHA as a cost-savings measure. An initial PHA may also request that a receiving PHA absorb portable families for which the initial PHA is being billed. This may include the receiving PHA retroactively absorbing families for which the initial PHA was already billed and made payments. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption, **but only for the current calendar year.** Both the receiving PHA and initial PHAs must agree to this arrangement. **Please reference section 10 of Notice PIH 2011-3.**

A receiving PHA cannot "absorb" a family into its HCV program until it executes a HAP contract on behalf of the family that moves to a new unit. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under a HAP contract for a new unit in the receiving PHA's jurisdiction, the receiving PHA cannot absorb the family.

- e. **Portability and Moves within the PHA Jurisdiction.** The HCV program regulations at 24 CFR § 982.314(e)(1) provide that the PHA may deny a family permission to move if the PHA does not have sufficient funding for continued assistance. **However, PHAs must notify their local HUD field office before denying moves due to insufficient funding.** Denial of requests to move under this regulation may cover both portability moves to a higher cost area as well as moves within the PHA jurisdiction to higher cost units.

In order to deny a move, the PHA must determine and demonstrate that based on the current funding available, it has insufficient funds to pay for higher subsidy amounts without having to terminate assistance of current program participants during the current CY. In projecting whether there is sufficient funding available for the remainder of the CY, the PHA may use reasonable estimates to factor in conditions such as pending rent increases and attrition rates for families leaving the program. If this insufficient funding condition exists, the PHA does not need a regulatory waiver from HUD to deny a request to move.

In determining if the PHA has sufficient funding available to approve a move, the PHA **must** take into consideration its available budget authority (including any available NRA).

A PHA may only deny a move where the requested move is voluntary (i.e., the family elects to move but is not required to move because of unaddressed Housing Quality Standards (HQS) violations, owner re-occupancy of the unit, etc.). A PHA may not deny a move under 24 CFR § 982.314(e)(1) if the move would reduce the family's subsidy cost to the PHA (e.g., a family wished to move under portability to a lower cost area). A PHA may not deny a move to a higher cost area or unit as a cost-savings measure in order to admit additional families from its waiting list into the HCV program, regardless of whether the PHA has unit months available to do so.

A higher cost area is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or more generous subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). In the case of portability moves, the PHA needs to contact the receiving PHA before denying the move to confirm that the receiving PHA (a) will not absorb the family and (b) that the HAP costs would be higher. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR § 982.314(e) (1).

- f. **Interim Reexaminations.** The PHA could **revise its current policies, if necessary, to** require families to report all increases in income between reexaminations and conduct more frequent interim income reviews for families

reporting no income. The effective date of an annual or interim reexamination of family income is dependent upon PHA policies.

- g. Minimum Rent.** The PHA may increase the minimum rent to \$50. The effective date for the increased minimum rent is dependent upon PHA policy. A PHA could institute a policy for increases in family contribution to be effective immediately, rather than at the next annual reexamination.
- h. Voucher Issuance.** The PHA may stop issuing turnover vouchers to new applicants and consider pulling back outstanding vouchers for applicants searching for housing that have not yet resulted in an executed HAP contract.
- i. Subsidy Standards.** The PHA may revise subsidy standards that exceed minimum HUD requirements to reduce bedroom size eligibility in accordance with 24 CFR § 982.402. Subsidy standards must be consistent with the HQS space requirements in 24 CFR § 982.401(d). PHAs are reminded that under 24 CFR § 982.401(d)(2)(ii), a dwelling unit must have at least one bedroom or living sleeping area for each two persons. Children of the opposite sex, other than the very young, may not be required to occupy the same bedroom or living/sleeping room.

If a family leases a unit larger than the unit size on the voucher, the PHA must ensure that the payment standard used to calculate the tenant share is based on the lower of the voucher unit size for which the family is eligible or the actual unit size leased. If the family size is reduced after admission, the PHA must ensure that the correct payment standard is used in calculating the family rent portion. An “empty nester” single individual (or any household with similarly reduced member size) living in a 3-bedroom unit should have a 0- or 1-bedroom payment standard, not a 3-bedroom payment standard. If the unit size for which the family is eligible changes during the term of the HAP contract, the new unit size is applicable at the first regular reexamination following the change in accordance with 24 CFR § 982.505(c)(5).

- j. Payment Standards.** A PHA may opt to lower payment standards for all or some unit sizes. In the tenant-based HCV program, a lower payment standard applies immediately to all new admissions, all movers, and families remaining in their units with a new HAP contract (e.g., when the owner offers or requires a new lease). For all other HCV participants, decreased payment standard amounts are not applied until the second regular reexamination after the payment standard is lowered (see 24 CFR § 982.505(c)(3)). The delayed applicability of a lower payment standard is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request a regulatory waiver for good cause so that reduced payment standards may be applied immediately with notice to the family in accordance with its administrative plan policies.

PHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the PHA has

already taken or will take in the future.

PHA requests for approval of payment standards below 90 percent of the published fair market rent (FMR) for any unit size may be approved by HUD field offices. However, 24 CFR § 982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request that HUD Headquarters waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants or withdrawing vouchers from families searching for housing without the proposed reduction in payment standards.

In determining whether to approve PHA requests for payment standard waivers of 24 CFR § 982.503(d) or § 982.505(c)(3), HUD will review and take into consideration the PHA's current rent burden and the impact of the proposed change on the PHA's participants. In addition, as a condition of the waiver approval, HUD may require the PHA to raise payment standards and apply the new payment standard amounts immediately at such time that the PHA receives additional funding.

PHAs should note that they are not required to increase (or decrease) the dollar amount of their payment standards based on changes in applicable FMRs that take effect each Federal Fiscal Year on October 1st unless the change in FMR results in the PHA's payment standard being outside the basic range of 90 – 110 percent of FMR by bedroom size. A PHA that anticipates that any of its current payment standards will be below 90 percent of the new final FMRs and that does not wish to increase its payment standard for that bedroom size **must** request a waiver in advance per the procedure in the prior paragraph.

- k. **Utility Allowances.** According to 24 CFR § 982.517(d)(1), the PHA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family rather than the family unit size as determined under the PHA subsidy standards. A PHA may request a waiver of this regulation to apply the utility allowances for the bedroom size for which the family was eligible under the PHA's subsidy standards, rather than for the unit size the family is leasing if it is larger. However, if more than one cost-savings waiver is requested, the PHA must demonstrate how both/all waivers are necessary to avoid a shortfall that would result in the termination of families.

5. **Termination of Assistance Due to Insufficient Funding.** The regulation at 24 CFR § 982.454 provides that a PHA may terminate HAP contracts, in accordance with HUD requirements, if the PHA determines that funding under the CACC is insufficient to support continued assistance for families in the program.

In determining if funding under the CACC is insufficient to support continued assistance for families in the program, the PHA must take into consideration **all of** its available

budget authority (which includes unspent prior year HAP funds in the PHA's NRA account).

Before terminating HAP contracts on the basis of insufficient funding, the PHA must ensure that it has carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants. In addition, the PHA is encouraged to utilize alternative sources of unrestricted non-Federal funding that may be available to prevent the termination of rental assistance. **The PHA must notify the HUD field office and its financial analyst at the Financial Management Center (FMC) prior to issuing notices of termination actions due to insufficient funding. The notice must be in writing and must include all measures taken to date to reduce or eliminate the shortfall and the number and date(s) of proposed termination.**

PHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how the PHA will determine which HAP contracts will be terminated. Any PHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, a PHA should be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).

6. Reasonable Accommodations. Notwithstanding a PHA's adoption of policies noted above to deny portability or moves within a PHA's jurisdiction or revision of payment or subsidy standards, reasonable accommodation requests for a person's disability must still be evaluated in accordance with HUD's Section 504 implementing regulations at 24 CFR part 8. Such requests must be granted when an accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, unless it would impose an undue financial and administrative burden on the PHA or fundamentally alter the nature of the PHA's operations.

7. PHA Requests for Regulatory Waivers. The regulatory waiver process in Public and Indian Housing requires PHAs to first send their request to the appropriate field office; the field office then forwards the waiver request to the appropriate program office at HUD Headquarters along with a field office recommendation (See Notice PIH 2009-41).

8. Further Information. Any questions regarding this notice should be directed to Phyllis Smelkinson, Housing Program Specialist, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 (this is not a toll-free number) or by electronic mail at Phyllis.A.Smelkinson@hud.gov. **Persons with hearing or speech impairments may access this telephone number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.** In addition, PHAs that are experiencing funding difficulties, or that believe they may experience funding difficulties in the future, should contact their Financial Analyst at the FMC.

9. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3520). In accordance with the PRA, 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. The information collection contained in this notice has been approved under the PRA OMB Control Number 2577-0169.

/s/

Sandra B. Henriquez, Assistant Secretary for
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