U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention:
Housing Choice Voucher Program Administrators; Public Housing Field Office Directors**;** Section 8 Financial Management Center

NOTICE PIH 2018-12

Issued: June 28, 2018

Expires: Effective until amended, superseded, or rescinded

Cross References:
Notice PIH 2015-22 (HA)

Subject: Process for Public Housing Agency Voluntary Transfers and Consolidations of Housing Choice Vouchers and Project-Based Vouchers

1. <u>Purpose</u>. The purpose of this notice is to clarify the circumstances and describe the process under which HUD may approve a **voluntary transfer** or **consolidation** of budget authority (including restricted net position (RNP), unrestricted net position (UNP) and other capital assets)[1] and corresponding baseline units for the Housing Choice Voucher (HCV) program from the divesting public housing agency's (PHA) Consolidated Annual Contributions Contract (CACC) to the receiving or consolidating PHA's CACC. In a **voluntary transfer** one PHA's identifying number and CACC remains intact. In a **consolidation,** both or all of the PHAs' names, CACCs and identifying numbers will be permanently terminated and replaced by a new PHA with a new name, identifying number and CACC.

2. <u>Applicability</u>. This notice applies to PHAs that administer the HCV program, including project-based vouchers (PBV). This notice does not cover the Public Housing Low-Rent program or the Section 8 Moderate Rehabilitation (Mod Rehab) program. This notice supersedes PIH Notice 2015-22 (HA).

3. <u>Eligibility for HCV Transfers and Consolidations</u>. All transfers and consolidations will be permanent and for the entire balance of one PHA's HCV program to one or more receiving PHAs. The transfer or consolidation must be between PHAs within the same state. The receiving agency must have jurisdictional authority to administer the program in the divesting agency's geographic location. Additionally, the receiving agency must have the administrative capacity to administer the divesting PHA's program and must currently administer the HCV program within a reasonable proximity of the divesting PHA's jurisdiction to prevent the receiving agency from becoming administratively overburdened. Lastly, receiving agencies are responsible for

[1] Restricted net position (RNP) and unrestricted net position (UNP) are the current accounting terms for net restricted assets (NRA) and unrestricted net assets (UNA), respectively, based on GASB #63.

continuing the administration of the divesting PHAs program, which include serving the same population and the vouchers will continue to be utilized for their original intended purpose.

Divesting, receiving, and consolidating PHAs are bound by fair housing requirements, including the responsibility to affirmatively further fair housing and to reduce racial and national origin concentrations. Transfers will be considered only for PHAs with a standard and high Section 8 Management Assessment Program (SEMAP) performance designation and permitted where a receiving PHA has complied with corrective action plans to address financial or program audit findings related to the HCV program. Transfers will only be permitted to a receiving agency that already administers the HCV program.

4. Exceptions to Eligibility for HCV transfers. The Department will consider approving voluntary partial transfers only in the following cases: (1) the transfer is for the purpose of developing PBV units in an area of low poverty concentration, or (2) for a compelling business reason. These exceptions do not apply to consolidations.

5. Application Process for Transfers and Consolidations. At least 90 calendar days before the requested effective date of the voluntary transfer or consolidation, both the divesting and receiving PHAs must submit letters to their respective field offices indicating agreement upon the part of the PHAs to the transfer or consolidation, the name and code of the divesting and receiving or consolidating PHA(s), and the date upon which the PHAs would like the transfer to occur. The divesting PHA's letter must also include their reason for requesting the transfer. The receiving PHA's letter must include their commitment to serving the population within the divesting PHA's jurisdiction and their commitment to continue administering special purpose vouchers for their intended purposes. All transfers must have an effective date of either January 1st or July 1st of a given calendar year (CY). **No transfers or consolidations may be retroactive.** The letters must be signed by the respective Executive Directors with an accompanying board resolution. If the PHA is a unit of local government, the appropriate authorized official must sign the letter.

6. Renewal and Administrative Fee Funding Amounts for Units Transferred or Consolidated and Equity Balances. At the time of the transfer or consolidation, the divesting PHA(s) must transfer the total HAP budget authority on hand and accumulated restricted net position (RNP) balances to HUD. The divesting PHA must contact its Financial Analyst at the FMC to identify the method of payment to HUD. The divesting PHA must transfer its available administrative fees and unrestricted net position (UNP) to the receiving PHA to ensure continuity of assistance to transferred families.

While reviewing the transfer of UNP to the receiving/consolidated PHA, the HUD Field Office will ensure the divesting PHA has properly procured and entered into a contract with an independent public accountant to conduct its close-out audit[2], and has the funds available to cover it. HUD may assign extraordinary administrative fees (EAF), subject to availability of funds and justifiable circumstances, from the Administrative Fee set-aside funds to cover close-

[2] For a PHA under the single audit threshold, a close-out audit would consist of an Independent Public Accountant (IPA) validating the ending balances prior to transfer.

out audit costs and may conduct a final close-out or forensic audit of a divesting PHA, either prior to or following the transfer/consolidation. The HUD Field Office must contact the Housing Voucher Financial Management Division at PIH.Financial.Management.Division@hud.gov to confirm availability of extraordinary administrative fees (EAF); however, the divesting PHA's available administrative fee, UNP, and/or other non-federal funds must be considered first and restricted for this purpose. In extenuating circumstances, such as risk of waste or misuse of cash and other assets, the HUD Field Office will require the divesting PHA to transfer its available administrative fees and UNP balances immediately to the receiving/consolidated PHA. In these situations, the HUD Field Office will request the receiving/consolidated PHA to hold funds in escrow to be released to the divesting PHA (or the auditor) upon HUD's acceptance of the divesting PHA's audit.

Administrative fees earned and disbursed to the divesting PHA(s) during the months not yet reconciled by the time of the transfer or consolidation (whether an underpayment owed to the PHA or an overpayment owed HUD), will be provided (or offset) to the receiving or consolidating PHA(s) based on the divesting PHA(s)' rates. For subsequent years the renewal funding and administrative fee calculations will be considered based on the receiving or consolidating PHA's eligibility and leasing reported, respectively, subject to the mandates of the Appropriations Bill for that year.

If the divesting PHA(s) owes money to HUD or the U.S. Treasury (such as RNP used for other purposes, an executed repayment agreement, an audit finding for which a management decision has not yet been rendered or other circumstances), these funds must be repaid to HCV account or U.S. Treasury (as applicable) prior to the transfer, from the PHA's non-federal funds, insurance or UNP. If a divesting PHA is unable to pay monies owed and the receiving/consolidated PHA refuses to assume or is prohibited from assuming the debt of a divesting PHA, where the transfer or consolidation is in the best interest of the HCV program, HUD will follow the guidance in HUD's Debt Collection Handbook 1900 REV-4 (dated April 6, 2015).

Assumption of Liabilities and Liability for Corrective Action. Under some circumstances and as permitted by State and local law, receiving/consolidated PHAs may request to be held harmless for the impacts of performance deficiencies and certain HUD liabilities sustained by divesting PHAs prior to transfer/consolidation while still under their own CACC Receiving and consolidated PHAs generally assume divesting PHAs' liabilities, including but not limited to those arising under pending litigation associated with the 1937 Act, requirements of the Fair Housing Act, Title VI of the Civil Rights Act, or Section 504 of the Rehabilitation Act of 1973, and any tax debts.

The liability for taking corrective action to resolve violations of civil rights, environmental, labor, or other requirements shall not be extinguished by a transfer or consolidation. A divesting PHA may have obligations under a current court or administrative order, voluntary compliance agreement, or other arrangement. As part of the submission requirements, HUD requires either (1) the divesting PHA takes corrective action to the satisfaction of HUD or another entity with authority to enforce a corrective action agreement or order, or (2) the receiving PHA demonstrates to HUD's satisfaction that it has assumed liability for taking the corrective action. Notwithstanding, there may be circumstances in which the PHA may not divest itself of liability for taking corrective action, even if it has transferred its program to another PHA (e.g., a court order limiting assumption of liabilities).

7. Special Purpose Vouchers. Any special purpose vouchers (HUD-Veterans Affairs Supportive Housing (VASH); Family Unification Program (FUP); Non-Elderly Disabled (NED) and Five-Year Mainstream (MS5)) must be maintained and accounted for as such by the receiving PHA(s) or consolidating PHA. The receiving agency of a program that includes special purpose vouchers is responsible for the continued administration of each of these vouchers for the purpose they were intended without exception. Information about the PHA's FSS funding eligibility after a transfer/consolidation may be found in the applicable FSS NOFA through the following link to the FSS website: https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fss).

8. Recommendation to Headquarters. No later than 30 calendar days after the receipt of the documents referenced in section 5 of this notice, the HUD Field Office will complete its review of the transfer or consolidation documents. If the HUD Field Office determines that the request is unacceptable, the Public Housing Director will submit a written notice to the PHA. If the HUD Field office determines that the request is acceptable, the Public Housing Director will prepare a memorandum to the Housing Voucher Financial Management Division Director within that same 30-day period and at least 60 days prior to the requested effective date with the following information:

(1) name and code of the divesting and receiving or consolidating PHA(s);
(2) the HUD Field Office's determination that the receiving agency has the capacity to administer the divesting PHA's program and can effectively operate in the divesting PHA's jurisdiction based on the proximity of the involved PHAs' geographic locations;
(3) the requested effective date of the transfer or consolidation;
(4) the number of HCVs that will be divested to each receiving PHA or combined into the new consolidated PHA;
(5) confirmation that the HUD Field Office's legal counsel has provided their jurisdictional approval, agreeing that the receiving PHA has the legal authority to administer the program within their jurisdiction;
(6) the number of leased vouchers; and
(7) the number of special purpose vouchers or programs by category (HUD-VASH, FUP, NED, FSS and MS5) that will be divested to each receiving PHA or combined into the new consolidated PHA. If the Public Housing Director does not have information on the number of special purpose vouchers of the divesting PHA(s), he or she may contact the respective Financial Analyst at the Financial Management Center for assistance, or may send an email to the Housing Voucher Financial Management Division, at PIH.Financial.Management.Division@HUD.gov.

The Financial Management Division reserves the right to close-out incomplete transfers in cases where a request is missing critical information and documentation that is necessary to complete the review. In these cases, an email will be sent to the HUD Field Office point of contact informing them that the review could not be completed within the 30-day window due to the absence of necessary information and that the transfer will have to be resubmitted once all the necessary information has been collected.

Additionally, the HUD Field Office will provide information to the Financial Management Division on factors considered in the decision to recommend approval of the transfer or consolidation, including:

(1) the receiving or consolidating PHAs' most recent SEMAP performance designation;
(2) underutilization based on the receiving or consolidating PHAs' SEMAP leasing indicator regardless of performance;
(3) outstanding debts to HUD and the status of the divesting, receiving or consolidating PHAs' repayment; and
(4) estimated RNP and UNP balances as of the latest audited Financial Assessment Subsystem (FASS) submission, and restricted cash and investments for all divesting or consolidating PHAs as determined by the HUD Field Office.

A checklist that describes the PHA's documentation that the HUD Field Office must provide to headquarters with their recommendation to process the transfer or consolidation request is included as Attachment 1. Attachment 2 is for the HUD Field Office to input additional information such as performance and other key information required to process the transfer. The HUD Field Office must complete and sign Attachment 2 and submit it with all the documents listed in Attachment 1.

All the required information and documentation for the transfer/consolidation request must be uploaded to the FYE/Consolidations/Transfers SharePoint site, http://hudsharepoint.hud.gov/sites/reac/FYE/Fiscal%20Year%20End%20Request%20Upload/Forms/AllItems.aspx. For instructions of how to upload documents to the SharePoint Site: Select "**Guidance**" under "**Documents**" on the left side of the webpage then select the "**HCV Transfer Information File**" to find the "**HCV Transfer and Consolidation Requests – Instructions for Upload to SharePoint"**. Once documents are uploaded to the SharePoint, the HUD Field Office contact must send an email to PIHFinancialManangementDivision@hud.gov alerting reviewers that the request has been submitted.

Finally, all transfers and consolidations are considered permanent. PHAs will not be able to de-couple from the transferred or consolidated entity to reinstate a former program or PHA.

9. Approval Notification. To the extent possible, the Financial Management Division (FMD) will approve requests for transfers or consolidations within 30 days of receiving all the required information and documentation necessary to determine if the transfer or consolidation is approvable. Once the FMD in Headquarters has approved the transfer or consolidation, the Real Estate Assessment Center (REAC) and the Public Housing Field Office and Financial Management Center (FMC) Directors will be notified through an email including the signed transfer approval memo. The Public Housing Field Office Director will notify the respective PHAs of the approved transfer or consolidation of HCV budget authority and units. The FMC will prepare and transmit the requisite amendments to the CACC of all affected PHAs including a new CACC in the case of a consolidation. Finally, the REAC will move participants from the divesting PHA to the receiving PHA and will update HUD PIH systems.

10. Owner and Tenant Notification. No later than 30 days after receiving approval notification from HUD the receiving or consolidated PHA must notify owners and participants of the transfer or consolidation. The PHAs may not notify owners and participants of the transfer until they receive the HUD notification of approval.

11. HCV HAP Contracts. New tenant-based HAP contracts must be executed for families currently under HAP contracts signed by the divesting PHA. The receiving or consolidated PHA must execute new HAP contracts with the existing owners no later than at the family's next regular recertification or one year following the effective date of the transfer or consolidation, whichever date comes first. The family's regular recertification date will not change due to the transfer. No other changes to the HAP contracts will be required. Please review to Section 16 for information on new PBV HAP contracts.

12. Receiving or Consolidated PHA Management Responsibilities. At the time of the family's next regular reexamination, the receiving or consolidated PHA may apply its occupancy and subsidy standards and any other applicable administrative policies. However, if the payment standards of the receiving or consolidated PHA are lower than those of the divesting PHA(s), the receiving or consolidated PHA must follow its administrative policies and the requirements under 24 CFR § 982.505(c) regarding payment standard decreases. In addition, the receiving or consolidating PHA must comply with all reasonable accommodation waivers and exceptions. If there are issues with the reasonable accommodation waivers or exceptions, they should be addressed with the field office.

13. Public Housing Information Center (PIC) Data. The REAC will complete the transfer or consolidation of all Family Reports (form HUD-50058) in PIC, so that all affected families will be recorded under the receiving PHA's code or consolidated PHA's new code with the last action code (field 2a on the Family Report) that was entered by the divesting PHA.

14. Voucher Management System (VMS) Data Entry. Starting with the effective date of the transfer or consolidation, the receiving or consolidated PHA will begin including the transferred or consolidated units for the applicable month in its next VMS submission. Conversely, the divesting PHA(s) will stop including any divested units starting with the effective month of the transfer.

15. HUD Self-Reported Systems. PHAs that are transferring, or consolidating will be responsible for submitting their individual financial statements through FASS and other financial or program data to self-reported HUD systems, such as VMS and PIC, for periods prior to the effective date of the transfer or consolidation.

16. PBV Units. All provisions in sections 1 through 15 will apply. However, PBV HAP contracts must be executed as soon as possible between the receiving or consolidated PHA and the owner with the expiration date and all terms and conditions unchanged.

17. Information Contact. Inquiries about this notice should be directed to your field office Public Housing Director or Financial Management Center representative.

18. Paperwork Reduction Act. The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1955 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0169. 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/
Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

Attachments