

Secretary's
Representatives; State/Area
Coordinators; Directors,
Offices of Public Housing;
Administrators, Offices of
Native American Programs;
Public Housing Agencies;
Indian Housing Authorities;
Resident Management Corporations
(RMCs)

Notice PIH 96-35(HA)

Issued: June 4, 1996
Expires: June 30, 1997

Final Rule - Low Income Public and Indian Housing;
Vacancy Rule

1. **PURPOSE.**

This Notice transmits the subject Final Rule and compares the Final Rule with the previous Vacancy Rule. The Final Rule was published in the Federal Register on February 28, 1996, (61 FR 7586) and will first be used by HAs having fiscal years beginning July 1, 1996. The preamble material to the proposed rule (60 FR 37294) is also attached to provide additional background on the unique way this rule was developed and examples of how the Performance Funding System (PFS) subsidy eligibility will be computed.

This Notice also transmits a new form, HUD-52728, HA Calculation of Occupancy Percentage for a Requested Budget Year (RBY). This form replaces the previous Form HUD-52728-A and reflects the provisions of the new Vacancy Rule.

Revisions have also been made to form HUD-52723, Calculation of Performance Funding System Operating Subsidy, to make it consistent with the new rule. The revised HUD-52723 is being transmitted with this Notice.

2. **COMPARISON OF FINAL VACANCY RULE WITH PREVIOUS VACANCY RULE.**

The final rule distinguishes itself from the previous vacancy rule in several important respects, as follows:

a. Recognition of Circumstances Beyond an HA's Control That Cause Vacancies.

The final rule expands the number of circumstances and actions recognized by HUD as possible causes of vacancies that are beyond the control of the HA to correct. Consideration will now be given to such circumstances and actions as litigation; Federal, State or Tribal laws of general applicability, changing market conditions, failure to fund an otherwise approvable Resident Management Corporation (RMC) request for Federal modernization funding, and casualty losses. The special recognition given to units vacant because of natural disaster, HUD-approved or Court-ordered desegregation efforts, or insufficient funding for an otherwise approvable CIAP application that were in the previous rule have been retained. In order to receive recognition, the HA must show that the circumstance or action is preventing it from occupying, selling, demolishing, consolidating, rehabilitating, reconstructing, or modernizing the vacant units.

b. Treatment of vacant units undergoing modernization in CIAP, CGP or other funded modernization programs.

Under the previous vacancy rule, the Department permitted vacant units to be eligible for full operating subsidy when the units were undergoing modernization and would be reoccupied upon completion of the modernization work. The work also had to be on-schedule in accordance with the modernization implementation schedule. The final rule supports the principle embodied in the previous rule, i.e., HAs should not be unduly burdened while undertaking modernization activities because of lost rental revenue. However, the final rule limits eligibility for full operating subsidy to vacant units that are either under construction (i.e., construction contract awarded or force account work started) **or** included in a HUD-approved modernization budget, but the time period for placing the vacant units under construction has not yet expired. This time period is two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

The previous rule did not make these distinctions and permitted units to be considered as being under modernization when funds were first committed to the modernization program, often for the development of architectural and engineering (A & E) specifications. A & E work may cover a number of units, buildings, or projects that will not actually go to construction for some period of time.

c. Conditions under which a vacant unit is considered eligible for subsidy.

The final rule has significantly changed the definition of unit months available (UMAs) and limits the ability of an HA to include long-term vacancies in its count of UMAs. If an HA estimates that it will have a vacancy percentage of more than 3% for its RBY and more than five vacant units, after adjusting for vacant units undergoing modernization and vacancies beyond its control, the HA will have to analyze its vacancies remaining after adjustments, determine how many have been vacant for longer than 12 months, and exclude those vacancies from its UMAs. If long-term vacant units are removed from an HA's UMAs, those units will be eligible for a reduced subsidy, calculated at 20% of the AEL, and will continue to be eligible for utility costs. The previous vacancy rule did not make a distinction in the length of time a unit has been vacant.

d. Elimination of Comprehensive Occupancy Plans (COPs).

Under the final rule, no new COPs will be approved. A HA that has a HUD-approved COP as of July 1, 1996, will have the option of choosing to determine its PFS eligibility under the existing rule or to terminate its COP and be subject to the final rule. HAs are still encouraged to undertake the structured, analytical approach encompassed in the COP concept, i.e., to identify the causes of their vacancy problems and develop vacancy reduction strategies and actions that are responsive to the problems and appropriate to the management and resources of the HA.

3. **FORM HUD-52728.**

- a. General Advice. HAs should read the form instructions carefully since it may not be necessary for a HA to complete all sections of the form in order to determine an acceptable projected occupancy percentage for the

RBV. The form has been designed to go from the most simple situation to the relatively more complex cases. Periodically, there are **Stop & Note** notations to alert the HA that a positive response at that point means the form has been completed and the HA does not need to proceed further.

- b. Submission (General). The Form HUD-52728 is a supporting PFS form that is required to be submitted as part of the original operating subsidy calculation. An exception to this general requirement is when the HA is requesting operating subsidy solely to cover the cost of an Independent Audit (IA).

c. Submission By HAs With Fiscal Years Beginning (FYB) July 1, 1996. Because of delays in designing the form, HAs with FYB 7/1/96 should follow the following instructions regarding submission:

- 1) HAs that have not submitted the Calculation of PFS Operating Subsidy Eligibility (form HUD-52723) for their FYB 7/1/96 within 30 days after the issuance date of this Notice shall include the form HUD-52728 in their submission.
- 2) HAs that have already submitted the form HUD-52723 for their FYB 7/1/96, but then submit a revised calculation in order to take advantage of the recent PFS policy changes described in Notice PIH 96-24(HA), shall include the form HUD-52728 in their submission. An exception to this requirement will be if the HA is classified as a high occupancy HA in Part VI of the HUD-52728-A.
- 3) An HA with a FYB 7/1/96 that is not in either of the above two categories and has used the form HUD-52728-A to determine the projected occupancy percentage, will submit the form HUD-52728 with its mandatory adjustments. An exception to this requirement will be if the HA is classified as a high occupancy HA in Part VI of the HUD-52728-A.

4. **FORM HUD-52723**

In order to reflect the changes made to the PFS by the new Vacancy Rule, line 28e of the HUD-52723 has been changed to read "Long-term vacant units." If the HA has to make an adjustment for long-term vacancies, the unit months associated with those vacancies, shall be multiplied by 20% of the Allowable Expense Level (AEL) determined for the RBY and the result will be displayed on line 28e.

If additional information is needed, please contact Steve Sprague of the Finance and Budget Division, Office of Public and Assisted Housing, at (202) 708-1872.

/s/Michael B. Janis for
Kevin Emanuel Marchman
Acting Assistant Secretary

Attachments (not included)