



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

Special Attention of

Directors, Public Housing Hub Offices
Directors, Public Housing Program Centers
Director, Office of Field Operations
Public Housing Agencies
Regional Directors
State/Area Coordinators
Resident Management Corporations

Notice PIH 2005-03 (HA)

Issued: January 13, 2005

Expires: January 31, 2006

SUBJECT: Changes to Guidebook 7401.7 G, "Housing Agency (HA) Guidebook: Employee Benefit Plans"

1. Purpose

This notice directs public housing agencies (PHAs) to follow Office of Management and Budget (OMB) Circular A-87 regarding employee benefits plan administration, and transmits a change to the Housing Agency (HA) Guidebook: Employee Benefit Plans, 7401.7 G, paragraph 2.8, subparagraph (e), Forfeitures.

2. PHA Employee Benefits Plans and OMB Circular A-87

The requirements of OMB Circular A-87 apply where PHAs utilize Federal funds, such as the Public Housing Operating Fund, to provide for employee benefits plans. OMB Circular A-87 requires the return of forfeiture money to the related Federal program for use toward eligible program activities. Forfeiture money is prohibited from being used to enhance or augment plan administration or benefits. This requirement is effective for plan years beginning after March 31, 2005.

3. Explanation of Materials Transmitted

Guidebook 7401.7 G contains policy guidance regarding employee pension plan forfeitures in paragraph 2-8(e). This guidebook revision provides for consistency with the requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, that states that the Federal government is to receive an equitable share of any previously allowed pension costs that revert to the governmental unit in the form of a refund, withdrawal, or other credit. This notice revises the guidebook provision that states, "All defined contribution plans may use forfeitures (1) to be reallocated to accounts of other participants in a nondiscriminatory manner or (2) to be used to reduce HA contributions or administrative costs...."

The revised guidebook language for paragraph 2.8, subparagraph (e), Forfeitures, is as follows:

2-8.e. Forfeitures. All defined contribution plans must use employee retirement plan forfeitures, refunds, withdrawals, and other credits as a cash refund to the related Federal program for its share of the previously allowed employee pension cost. Treatment of forfeitures is limited to issuing a cash refund to the Federal program for its share of the previously allowed pension cost or to applying a credit to its allocation of future employer contributions. This requirement is effective for plan years beginning after March 31, 2005.

4. Change

Remove: Housing Agency (HA) Guidebook: Employee Benefit Plans, 7401.7 G, pages 2-5 and 2-6, dated 1/97.

Insert: Housing Agency (HA) Guidebook: Employee Benefit Plans, 7401.7 G, Chg. 1, pages 2-5 and 2-6, dated 11/2004.

This change has also been made to the electronic copy of the guidebook that is located on the HUD website via the Internet at http://www.hudclips.org/sub_nonhud/cgi/selecthbk.cgi.

_____/s/_____
Michael Liu, Assistant Secretary
for Public and Indian Housing

- b. Real estate shall not be purchased or sold as a principal activity. Mortgages are not in and of themselves considered as the purchase of real estate. Real estate trusts, however, are not acceptable.
- c. No purchase of commodities or commodity contracts shall be made.
- d. Loans shall not be made except through the acquisition of bonds, debentures, or other evidences of indebtedness of a type customarily purchased by institutional investors, whether publicly distributed or not.
- e. Not more than 10 percent of the voting securities of any one issuer shall be acquired.
- f. Short sales of securities shall not be made.
- g. Purchases shall not be made on margin, except for such short-term credits as are necessary for the clearance of transactions.
- h. Borrowings shall not be made except for emergency or temporary administrative purposes to an extent not exceeding that permitted by Sec. 18(f)(1) of the Investment Company Act of 1940.

2-8. CONTRIBUTIONS. Contributions may be paid on any periodic basis. Where contributions are paid in advance the plan should provide for reimbursement through employee withholding and for recovery of any excess contribution not due in the event of termination of reemployment. Under the IRC, “contributions” may not be paid in advance to an IRA or SEP-IRA. The plan must specify whether basic or total compensation (i.e., including overtime) will be used in the calculation of contributions and the method of determining this amount. Participating employees may be classified by salary brackets for the purpose of computing contributions. Interest may be paid to employees on their accumulated voluntary or mandatory contributions refunded at death or termination of employment based upon actual investment experience.

- a. Basic HA Contributions. The HA may contribute a percentage of an employee’s total compensation (including or excluding overtime) to provide retirement benefits.
- b. Mandatory Employee Contributions. The plan may provide for mandatory employee contributions. In such event, employees should not be required to contribute an amount which exceeds 6 percent of an employee’s total compensation, nor an amount in excess of basic HA contributions.
- c. Voluntary Employee Contributions. The plan may provide for voluntary employee contributions in addition to any mandatory employee contributions. These voluntary contributions may not exceed 10 percent of an employee’s total compensation over a 12-month period. Deductible Employee contributions are not permitted for plan years beginning after 1986. See also paragraph 2-10.
- d. Social Security Supplement. If Social Security coverage is not in effect, HA and mandatory employee contributions, if any, may be increased by an amount not in excess of the Old-Age, Survivors, and Disability Insurance (or FICA) tax rate, exclusive of the Part A Medicare tax, of taxable earnings.
- e. Forfeitures. All defined contribution plans must use employee retirement plan forfeitures, refunds, withdrawals, and other credits as a cash refund to the related Federal program for its

share of the previously allowed employee pension cost. Treatment of forfeitures is limited to issuing a cash refund to the Federal program for its share of the previously allowed pension cost or to applying a credit to its allocation of future employer contributions. This requirement is effective for plan years beginning after March 31, 2005.

- f. Pick-up of Employee Contributions. Pursuant to IRC Sec. 414(h)(2), a HA may “pick-up” the mandatory employee contributions which would otherwise be applicable to a regular contributory plan and “deem” these payments to be HA contributions under the plan subject to the following conditions:
- (1) The employee’s compensation inclusive of the contributions deemed to have been picked-up by the HA must not change as the result of the HA pick-up of employee contributions.
 - (2) The pick-up of employee contributions must apply to all plan participants.
 - (3) The pick-up of employee contributions must be through an appropriate Board resolution. This resolution must specify that the contributions, although designated as employee contributions, are deemed as being paid by the HA in lieu of contributions by the employee.
 - (4) The arrangement must meet the requirements of Sec. 414(h)(2) of the Code and related Revenue Rulings.
 - (5) Employees must be 100 percent vested in account balances attributable to the employees’ mandatory contributions which the HA has picked-up.
 - (6) For all other employment purposes, the HA shall consider the employee’s compensation to include the amounts of mandatory employee contributions deemed to be HA contributions.
 - (7) For FICA tax purposes, the HA must consider amounts deemed to be HA contributions as covered compensation and subject to FICA taxes.
 - (8) In accordance with Sec. 414(h)(2) of the Code, the amounts paid by the HA and deemed to be HA contributions will not be subject to Federal
 - (9) income tax (or Federal income tax withholding) until paid to the employee. Similar treatment may be afforded on state income taxes for those states which follow the Federal government’s tax return.

2-9. NONDISCRIMINATION REQUIREMENTS FOR EMPLOYER MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS. TRA ’86 restricts the amount that may be contributed to plans by imposing an “Average Contribution Percentage” (ACP) test on all plans qualified under Sec. 401(a) of the Code (Tb RA ’86 Sec. 1114 and 1117). This test compares the ACP of highly compensated (HC) employees to the ACP of non-highly compensated (NHC) employees. The amount contributed includes employee mandatory and voluntary contributions, plus HA contributions made as result of employees’ contributions. For a HA’s purpose, a highly compensated employee is any one who, in the current or preceding year:

- (1) received compensation from the HA in excess of \$75,000,
- (2) received compensation from the HA in excess of \$50,000 and was in the top-paid 20 percent of all employees, or