



U.S. Department of Housing and
Urban Development

Office of Public and Indian

Housing

Special Attention:
Directors, Offices of
Public Housing;
Administrators, Offices of
Native American
Programs; Public
Housing Agencies and
Indian Housing
Authorities

Notice PIH 96- 6 (HA)

Issued: February 13, 1996
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Cross References:

**Subject: Administrative Provisions of the January 26, 1996
Continuing Resolution Affecting Public and Indian Housing
Programs**

1. Purpose: This notice alerts public housing agencies (PHAs) and Indian housing authorities (IHAs), collectively referred to as housing authorities or HAs, of significant statutory changes in the Public and Indian Housing programs for the duration of Federal Fiscal Year 1996, which ends on September 30, 1996, and provides implementing instructions. These changes were made by the Continuing Resolution entitled "Making Appropriations for FY 1996 to Make a Downpayment Toward a Balanced Budget, and for Other Purposes" that became law on January 26, 1996 (Public Law No. 104-99).

2. Statutory Changes: This notice covers the following statutory changes -- (1) Minimum rents; (2) Establishment of ceiling rents; (3) Definition of adjusted income; (4) Suspension of federal preferences; and (5) Repeal of provisions regarding income disregards. The first four changes are explicitly made applicable to the operations of Indian Housing Authorities by Section 402(e), and the language in Section 404 repealing the income disregards makes that provision equally applicable to IHAs.

(a) MINIMUM TENANT RENTS

(1) Description: Section 402(a) of the Continuing Resolution requires that each family assisted under the Public or Indian housing rental programs (but not the Indian

Housing Mutual Help program) pay a monthly "minimum rent" of not less than \$25 for fiscal year 1996. The law further provides HA discretion to increase the monthly "minimum rent" to up to \$50.

- (2) Result: The total tenant payment (TTP) for families participating in Public or Indian housing must be at least \$25. The HA may opt to set this minimum TTP amount anywhere from \$25 to \$50.

Accordingly, the TTP in the Public and Indian programs must be the greatest of:

- o 30 percent of family monthly adjusted income;
- o 10 percent of family monthly income;
- o welfare rent in as-paid states; or
- o \$25 or a higher minimum amount set by the HA, up to \$50.

It is possible for families to still qualify for a utility reimbursement despite the change in the law. For instance, if a family's TTP is the minimum \$25 and the HA's utility allowance is \$60, the family would receive a utility reimbursement of \$35 for tenant-purchased utilities. Basing the minimum rent on TTP and using this kind of calculation is necessary to assure equal treatment of all residents, irrespective of whether utilities costs are paid by the housing authority or paid separately by the resident family.

- (3) HA Action: The HA must decide whether to increase the minimum TTP from \$25, up to but not to exceed \$50. In contemplating a minimum rent exceeding the \$25 statutory minimum, the housing authority needs to consider the potential impact of such charges on the lowest-income residents, and the possibility that the minimum rent requirement may apply only during the current Federal Fiscal Year. Unless the minimum rent authorization is extended in additional legislation, minimum rents may only be charged until September 30, 1996.

If the housing authority elects to charge a minimum rent of more than \$25 and not more than \$50, it must pass a resolution specifying the minimum rent (TTP), the effective date of the new policy, and an explicit statement that the minimum rent policy automatically expires on September 30, 1996, absent additional legislation. If they elect to charge only the statutory minimum \$25, the housing authority must amend its Tenant Selection and Occupancy Policy according to its own procedures. In either event, a copy of the Board (or equivalent governing body) resolution implementing the minimum rent must be provided to the HUD field office promptly after passage.

The HA must immediately charge the minimum rent for all applicants admitted to the program.

As soon as practicable in accordance with applicable laws and lease notice provisions, but no later than April 1, 1996, unless applicable laws or lease notice provisions require otherwise, the HA must charge the minimum rent prospectively for all other tenants. The HA must send a notice to the tenants advising them of any changes in their rent.

Until otherwise notified, the higher of (1) any welfare rent, or (2) the \$25 minimum rent or higher amount set by the HA, up to \$50, should be inserted on line 13 of Form HUD-50058.

(b) ESTABLISHMENT OF CEILING RENTS

- (1) Description: Sec. 402(b) of HUD's FY 1996 Continuing Resolution authorizes housing authorities to adopt ceiling rents that reflect reasonable market value of the housing unit, but are not less than the sum of the monthly per-unit operating costs and a deposit to a replacement reserve (at the sole discretion of the HA). HUD is explicitly charged to develop regulations to implement this amendment, after notice and a period for public comment. HUD expects to develop a Proposed Rule promptly, and complete a Final Rule this Fiscal Year. The Continuing Resolution allows these ceiling rents to be applicable only for rent determinations effective between January 26, 1996, and September 30, 1996; tenant rents based on ceiling rents would continue in effect until the next reexamination, but could not be used in reexaminations after September 30, 1996, unless authorized in subsequent legislation.
- (2) Result: Pending issuance of final regulations, a "Transition Rule" will be in effect, as specified in the Continuing Resolution. Under the "transition rule" PHAs, including IHAs, can implement a ceiling rent, which must be not less than the cost to operate the HA's units, and can be implemented (a) using the provisions of existing law, (b) equal to Fair Market Rents for the area in which the unit is located, or (c) equal to the 95th percentile of rents paid for a unit of comparable size by tenants in the same public housing development or a group of comparable developments totalling 50 units or more. By law, any ceiling rent must be not less than the monthly cost to operate the housing authority's units.
- (3) HA Action: Housing authority action is voluntary under this provision. With respect to ceiling rents based on existing law ((a), above) HAs can continue to make application, and HUD will continue to authorize ceiling

rents under the procedures described in the Federal Register Notice published on March 15, 1989, "Establishing Ceiling Rents."

In the case of ceiling rents based on (b) Fair Market Rents or (c) 95th percentile rents, housing authorities need not request prior authorization from HUD. In adopting ceiling rents under (b) or (c), above, the housing authority must pass a resolution describing the basis for the ceiling rent(s), the effective date of the new policy, and an explicit statement that the policy authorizing the ceiling rent automatically expires on September 30, 1996, absent additional legislation. A copy of the Board (or equivalent governing body) resolution adopting ceiling rents must be provided to the HUD field office promptly after passage. The housing authority must provide appropriate notification to all resident families affected by the ceiling rent policy, and should consider a broader notification to the public as a marketing measure.

- (4) IHA Action: IHAs are authorized to follow the procedures outlined in paragraph (3) above, with respect to the use of Fair Market Rents or 95th percentile rents, or they can continue using the provisions of existing law to implement ceiling rents under the guidance contained in Notice PIH 95-68, "Calculating Ceiling Rents in the Indian Housing Rental Program; Use of Actual Debt Service," issued November 13, 1995.

(c) DEFINITION OF ADJUSTED INCOME

- (1) Description: Section 402(c) of the FY 1996 Continuing Resolution allows housing authorities to adopt other adjustments to earned income for residents in Public Housing (including Indian Housing), but not for Section 8 tenants, in addition to those defined in Sec 3(b) of the US Housing Act of 1937. A housing authority electing to permit such additional deductions may not use the resulting lower rental income in calculating eligibility for operating subsidies. Such additional deductions from earned income are at the risk of the PHA or IHA. However, housing authorities may recoup initial losses if they can attract a tenant body with higher incomes upon unit turnover, and/or successfully encourage income increases among current tenants.
- (2) Result: PHAs and IHAs are authorized to permit additional adjustments to earned income, but they will have to absorb any resulting loss in rental income. Housing authorities will have to develop their rent roll twice and calculate their income projections twice -- once using the rent roll that would have been obtained using only the statutorily-defined income adjustments (the figure used in determining eligibility for operating

subsidy under the PFS), and once using the income based on the actual rent roll reflecting the effects of the locally-determined additional adjustments to tenants' earned income and the resulting lower rents.

As is the case under current regulations, housing authorities will be able to retain the benefit of any resulting increase in rental income experienced during the fiscal year. HUD is considering issuance of a proposed regulation regarding the ability of a PHA to retain a portion of increases generated in its rental or other income for subsequent fiscal years.

Because this authorization expires on September 30, 1996, the additional adjustments would be permissible only for rent determinations occurring between January 26, 1996, and September 30, 1996; the adjusted income determinations thus derived would continue in effect until the next reexamination, but could not be used in reexaminations after September 30, 1996, unless authorized in subsequent legislation.

This new provision does not affect any of the current mandated income exclusions applied to earned income, i.e., certain earnings and income received from participation in specific employment training programs and from specific subsequent employment (see for example 24 CFR 913.106(c)(11) and (13) and 950.102).

Until otherwise notified, any earned income deductions permitted by the housing authority should be reported on line 9c of Form HUD-50058.

- (3) HA Action: Housing authority action is voluntary under this provision. If PHAs or IHAs plan to offer additional income adjustments, they need to amend their admissions and occupancy policies by resolution of the Board of Commissioners. Their resolution should specify the nature and extent of the additional adjustment(s), the effective date of the new policy, and an explicit statement that the policy authorizing the additional adjustments automatically expires on September 30, 1996, absent additional legislation. A copy of the Board (or equivalent governing body) resolution adopting additional income adjustments must be provided to the HUD field office promptly after passage. The housing authority must provide appropriate notification to all resident families, and should consider a broader notification to the public as a marketing measure.

(d) **FEDERAL PREFERENCES SUSPENSION**

- (1) Description: Section 402(d) of the Continuing Resolution eliminates federal preferences for the Public and Indian Housing programs for fiscal year 1996 by amending Section 6(c)(4)(A) of the U.S. Housing Act of 1937. This amendment, therefore, also eliminates the right of public and Indian housing residents to retain federal preference status on the tenant-based waiting lists during fiscal year 1996. The "anti-skipping" provisions of Section 16(c) of the US Housing Act of 1937, which prohibit housing authorities from selecting families for admission in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence, are also superseded by the present amendments.
- (2) Result: For purposes of selecting families from the waiting list during fiscal year 1996, the HA may establish, after public notice and an opportunity for public comment, a written system of preferences for selection that is not inconsistent with the comprehensive housing affordability strategy (CHAS) of either the State or the local general government for the HA jurisdiction: the CHAS requirement is not applicable to Indian Housing programs. The 50 percent limit on local preference admissions is not applicable for fiscal year 1996, because this requirement is part of the suspended statutory federal preference system.

The suspension of Section 6(c)(4)(A)(iii) of the U. S. Housing Act of 1937 results in the removal of the statutory prohibition against granting preferences to applicants who have been evicted from a 1937 Housing Act program within the past three years because of drug-related criminal activity (see 24 CFR 960.211(b)(3) and 950.303(b)(3)). Although no longer required under the statute, HUD urges housing authorities to continue this preference denial policy, and to reject applications from families with a history of violent or drug-related criminal activity.

Suspension of Section 6(c)(4)(A)(iv) removes the statutory requirement that housing authorities, to the maximum extent possible, include families with a broad range of incomes in their projects. Although no longer required in statute, HUD urges housing authorities to retain selection and admissions policies that foster a broad range on incomes in housing authority developments.

- (3) HA Action: Housing authority action is voluntary under this provision. Effective January 26, 1996 (the date of enactment of the Continuing Resolution), HAs are no longer required to select families from their waiting list using federal preferences. In addition, HAs are no

longer required to provide public housing residents a selection preference for Section 8 based on their prior federal preference status.

HAs should make a determination of what, if any, changes in HA selection preferences should be implemented.

The HA's selection policies must not affect the statutory admissions preference of the elderly, disabled, or displaced over other singles set forth in 24 CFR 912.3 and 950.301(d) of the program regulations. The HA must give preference to a family (a) whose sole member is a displaced person or (b) whose head or spouse or sole member is an elderly person or a disabled person over a single person that is not elderly, disabled, or displaced.

If the HA wishes to change its current preference system, the HA must give notice and opportunity for public comment before issuing certificates and vouchers under the new participant selection system. This requirement is applicable even if the new system is simply based on the date and time of application or random selection. Public notice and opportunity to comment is not necessary for HAs to continue their current participant selection system (including the federal preferences). However, if the HA wishes to drop the former federal preferences and just retain the current local preferences, or wishes to lower the percentage of federal preference admissions, the HA is required to give notice and opportunity for public comment.

IHAs are authorized to continue to follow the guidance contained in Notice PIH 96-1, "Reissuance of Notice PIH 94-25 (IHA), Native American Preference in Admissions to Assisted Housing Programs," issued January 22, 1996.

The admissions policy must be revised and adopted by the housing authority before a new tenant selection system is implemented. The HA should provide appropriate notification to applicants and other interested persons of the implementation of any new tenant selection system. The housing authority may exercise reasonable judgement in determining who should be notified and the form of notification (e.g., newspaper publication or notice to applicants).

Families who were offered a unit on or before January 26, 1996, and who are in the process of accepting the unit are not affected by this change. The Department does not intend that these families be denied admission because of the suspension of federal preferences described in this Notice.

Unless the federal preference suspension is extended by additional legislation, federal preferences will be required for admissions after October 1, 1996.

(e) **REPEAL OF PROVISIONS REGARDING INCOME DISREGARDS**

- (1) Description: Sec. 404 of the Continuing Resolution repeals Section 957 of the Cranston-Gonzales National Affordable Housing Act of 1990, "Maximum Annual Limitation on Rent Increases Resulting from Employment," and Section 923 of the Housing and Community Development Amendments of 1992, "Economic Independence."
- (2) Result: The 1990 provision would have prevented HUD from increasing by more than 10% the rent on any assisted unit because of an increase in adjusted monthly income as a result of employment of a member of the family who was previously unemployed. The 10% limitation would be effective each year for three years after such new employment, and the provision was explicitly made ". . . subject to approval in Appropriations Acts . . ." The issue was not revisited in subsequent appropriations acts, and was not implemented.

The 1992 amendments urged that "The Secretary . . . should immediately implement Section 957 . . . (emphasis added)" HUD Counsel and the Office of Management and Budget determined that the language of the 1990 Act remained controlling, and that in the absence of appropriations, it continued to be impossible to implement Section 957. The Continuing Resolution clarifies Congressional intent by repealing both earlier provisions retro-active to their respective dates of enactment, as though the earlier provisions had never existed.

- (3) HA Action: No housing authority action is necessary.

3. Authorizing Legislation Changes: The FY 1996 provisions discussed in this notice also are being considered by the authorizing committees in both houses of Congress. Therefore, it is likely that some or all of these temporary statutory changes will be made permanent when new housing legislation is enacted.

/s/ Kevin Emanuel Marchman
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Secretary for Distressed and Troubled
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