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

Special Attention of:
Office Directors of Public Housing;
Regional Directors; Public Housing
Agencies.

Notice PIH 2007-14 (HA)

Issued: June 18, 2007

Expires: June 30, 2008

Cross References:

SUBJECT: Implementation of Federal Fiscal Year 2007 Funding Provisions for the Housing Choice Voucher Program

1. **<u>Purpose.</u>** This Notice implements the Housing Choice Voucher (HCV) program funding provisions resulting from enactment of the Revised Continuing Appropriations Resolution, 2007 (Revised CR 2007) (Public Law 110-5), on February 15, 2007 and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (hereinafter referred to as the Supplemental 2007) (Public Law 110-28) on May 25, 2007. The Revised CR 2007 establishes a new allocation methodology for calculating and distributing housing assistance payments (HAP) renewal funds and continues to prohibit the use of renewal funds for over-leasing. This process is commonly referred to as "re-benchmarking". The requirements of the Revised CR 2007 supersede any other Notice or regulation to the extent that such Notice or regulation is inconsistent with the Revised CR 2007. Additionally, the Supplemental 2007 contains special provisions related to the calculation of HAP renewal funding for certain categories of Public Housing Agencies (PHAs) which are described later in this Notice. This Notice continues to provide that any budget authority provided to PHAs in calendar year (CY) 2007 that exceeds actual program expenses for the same period must be maintained in the PHA's net cumulative HAP and Administrative Fee equity accounts (formerly known as the Undesignated Fund Balance account) in accordance with Generally Accepted Accounting Principles (GAAP).

2. **<u>Background.</u>** In HUD's Federal Fiscal Year (FFY) 2005 Appropriations Act (Public Law 108-447), Congress enacted changes in the HCV program by generally funding each PHA based on Voucher Management System (VMS) leasing and cost data averaged for the months of May, June and July 2004, and by applying the 2005 Annual Adjustment Factor (AAF) and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers. In HUD's FFY 2006 Appropriations Act, (Public Law 109-115), Congress directed the Department to provide HAP renewal funds to PHAs based on the amounts PHAs were eligible to receive under the FFY 2005 Appropriations Act as calculated by HUD before any pro rata reductions and to adjust those amounts for inflation by applying the 2006 AAFs and other specified adjustments. In instances where the PHA experienced temporarily low leasing levels during May, June and July of 2004 which did not accurately reflect leasing levels and costs for the PHA's 2004 Fiscal Year, the 2006 Act provided up to $45 million to adjust for such incongruity. The Revised CR 2007 establishes

a new methodology for HAP renewal funding as described below.

3. **Calculation of CY 2007 HAP Funding Allocations.** The Revised CR 2007 provides:**"…$14,436,200,000** in HAP Renewal funding shall be for renewals of expiring section 8 tenant-based annual contributions contracts (including renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ('the Act' herein)): *Provided further,* That notwithstanding any other provision of law, from amounts provided under the second proviso under this section the Secretary shall, for the calendar year 2007 funding cycle, provide renewal funding for each public housing agency based on VMS leasing and cost data for the most recently completed period of 12 consecutive months for which the Secretary determines the data is verifiable and complete, prior to pro rations, and by applying the 2007 AAF as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers or vouchers that were not in use during the 12-month period in order to be available to meet a commitment pursuant to section 8(o)(13) of the Act: *Provided further,* That the Secretary shall, to the extent necessary to stay within the amount provided under the second proviso under this section, pro rate each public housing agency's allocation otherwise established pursuant to this section: *Provided further,* That except as provided in the following proviso, the entire amount provided under the second proviso under this section shall be obligated to the public housing agencies based on the allocation and pro rata method described above: *Provided further,* That public housing agencies participating in the Moving to Work demonstration shall be funded pursuant to their Moving to Work agreements and shall be subject to the same pro rata adjustments under the previous provision: *Provided further*, That from amounts provided under the second provision of this section up to $100,000,000 shall be available only: (1) for adjustments for public housing agencies that experienced a significant increase, as determined by the Secretary, in renewal costs resulting from unforeseen circumstances or from the portability under section 8(r) of the Act of tenant-based rental assistance; and (2) for adjustments for public housing agencies that could experience a significant decrease in voucher funding that could result in the risk of loss of voucher units due to the shift to using VMS data based on a 12-month period: *Provided further*, That none of the funds provided under the second proviso of this section may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract."

   Allocations for HCV HAP Renewal funding will be calculated as follows:

   A. A new HAP funding baseline will be established based on validated leasing and HAP cost data in the VMS for the most recently completed period of 12 consecutive months for which the Secretary determines the data is verifiable and complete. The Department has determined this period to be January 2006 through December 2006 and, as such, the VMS data for this period will be used to calculate the renewal funding baseline for CY 2007.

   B. The baseline will be increased to provide funds for the first time renewal of vouchers for HOPE VI and tenant protection actions awarded to PHAs in late 2005 and in

CY 2006 as the HAP costs for those vouchers may not be fully reflected in VMS. Tenant protection vouchers include housing conversion actions, non-renewal or termination of Section 8 Moderate Rehabilitation contracts, and the demolition and disposition of public housing units. HUD will adjust funding for these vouchers to insure each voucher is funded for 12 months during CY 2007. HUD will assume that these vouchers are leased 90 days after the effective date of the increment and are reflected in VMS from that point forward. HUD will fund the higher of the per unit amount initially funded or the validated per unit VMS amount. The following is a hypothetical example of an increment awarded in CY 2006 which will expire in CY 2007:

New Increment Effective Date:	July 1, 2006
New Increment Expiration Date:	June 30, 2007
Number of Units:	75
Budget Authority (BA):	$472,500
Per Unit BA: (BA divided by 12 months)	$525
Average VMS Per Unit Cost:	$480

Funding in 2007:	Months
1. January through June from the original BA;	6
2. Leasing and costs assumed in VMS beginning October 1, 2006 (90 days after effective date). VMS baseline has data for October through December 2006;	3
3. Remaining months funded at higher of original per unit BA or average PUC from VMS baseline; in this example. (They are funded at $525 per unit per month, for 75 units)	3
Total months funded in 2007	12

C. Adjustments in funding will be made for voucher units that were not in use during any months of CY 2006 because they were held to meet a commitment pursuant to section 8(o)(13) (project-based voucher (PBV) assistance) of the U.S. Housing Act of 1937. In order to qualify for this type of an adjustment, the units must have been under a Project-Based Voucher (PBV) Agreement to Enter into a Housing Assistance Payments Contract (AHAP) that covered part or all of CY 2006. The Department has already collected this information under the process described in Section 4 below.

D. If a PHA was over-leased in CY 2006 (i.e., the PHA's unit months leased were in excess of the PHA's authorized baseline units times 12 as of the end of CY 2006), the average per unit HAP cost will be derived by dividing the total HAP costs reported for CY 2006 by the number of unit months leased for the 12 months during that CY. The average per unit HAP cost will then be multiplied by the authorized number of baseline unit months.

E. The HUD-published AAFs for 2007 will be applied to the PHA's 12-month renewal allocation after all adjustments have been applied. The specific AAFs that HUD will use pursuant to Congress' direction to reflect inflation can be found at HUD's website at: http://www.hud.gov/offices/pih/programs/hcv/. The AAF that includes the highest cost utility will be applied.

F. This baseline amount will be increased or decreased respectively to reflect the transfer of vouchers to or from the PHA, to insure the costs represented by transferred vouchers are included in the eligibility of the receiving PHA.

G. HUD will determine the total amount needed to fund all PHAs, compare that amount to the total FY 2007 appropriation available for renewals, and will prorate each PHA's CY 2007 allocation accordingly.

4. **Funding Allocations and Requests for Adjustments:**
On January 19 and March 26, 2007, PHAs were provided an opportunity to review the following:

- Omissions of new funding increments with an effective date of November 1, 2005 to December 1, 2006;
- Units transferred to or from a PHA for the period January 1, 2006 to December 31, 2006;
- Vouchers held from leasing pursuant to a project-based voucher (PBV) commitment during any months of CY 2006; and
- Discrepancies in the VMS data during CY 2006.

The Department reviewed all requests that were submitted by the deadline date of April 10, 2007, and made all approved adjustments. PHAs will be notified in writing of the results of those reviews. **There will be no further adjustments or appeals to the funding allocations provided to PHAs.**

5. **Special Provisions for Certain PHAs resulting from the Supplemental 2007 (PL 110 -28):** The Supplemental 2007 (Public Law 110-28) provides three categories of PHAs for which the calculated renewal allocation may be different than that provided under the Revised CR 2007 (Public Law 110-5) (re-benchmarking). The three categories of PHAs are: **(1)** PHAs that are eligible for assistance under Section 901 in Public Law 109-148 or are located in the same counties as those eligible for Section 901 and operate voucher programs under section 8(o) of the U.S. Housing Act of 1937 but do not operate public housing under section 9 of such Act, and any public housing agency that otherwise qualifies under this category must demonstrate that they have experienced a loss of rental housing stock as a result of the 2005 hurricanes; **(2)** public housing agencies that would receive less funding under the method provided in Public Law 110-5 (re-benchmarking) than they would receive under the special provisions of the Supplemental 2007 (Public Law 110- 28) and that have been placed in receivership or the Secretary has declared to be in breach of an Annual Contributions Contract by June 1, 2007; and, **(3)** public housing agencies that spent more in

calendar year 2006 than the total of the amounts of any such PHA's CY 2006 allocation amount and available housing assistance payments undesignated funds balance from CY 2005 and CY 2006 and the amount of any such PHA's available Net Cumulative Administrative Fee Equity account through CY 2006.

6. **Calculation of renewal allocation for (3) Categories of PHAs provided in the Supplemental 2007 (PL 110-28) and described in Item 5 above:**

    - A PHA in category **(1)** above shall receive funding for CY 2007 based on the **higher** of the amount the PHA would receive under the provisions of the Revised CR 2007 (PL 110-5) (re-benchmarking) or the amount the PHA received in CY 2006 (including any adjustments and application of the 2007 AAF). In order to receive funding on the basis of the amount received in CY 2006, the PHA must submit a plan, to be approved by the Secretary, that demonstrates that the PHA can effectively use, within 12 months of HUD approval of the plan, the funding that the PHA would receive under this provision which is in addition to the funding the agency would receive under the Revised CR 2007 (PL 110-5) (re-benchmarking). The plan must additionally document that the PHA sustained a loss of rental housing availability due to the hurricanes.
    - A PHA in category **(2)** above may receive the amount the PHA received in CY 2006 (including any adjustments and application of the 2007 AAF). To receive renewal funding based on the CY 2006 funding allocation (including any adjustments and application of the 2007 AAF) **a PHA must submit a plan,** to be approved by the Secretary that demonstrates that the PHA can effectively use, within 12 months of HUD approval of the plan, the additional amount it would receive based on this methodology. If the plan is not accepted, the PHA would receive the amount under the Revised CR 2007 (PR 110-5) (re-benchmarking).
    - A PHA will be determined by HUD to be in category **(3)** above if the PHA spent more in CY 2006 than the total of the amounts of any such PHA's CY 2006 allocation amount and available housing assistance payments undesignated fund balance account from CY 2005 and the amount of any such PHA's available Net Cumulative Administrative Fee Equity account as of December 31, 2006. A PHA determined by HUD to be in category **(3)** will receive for CY 2007 the amount the PHA received for CY 2006 (including any adjustments and application of the 2007 AAF).

7. **Submission of Plans for Category (1) and Category (2) PHAs:** PHAs that are potentially eligible under **Categories (1) and (2) above**, have been notified in writing and advised of the procedures and deadline for submitting a plan. The Department will notify PHAs of approved plans and final funding amounts.

8. **Funding for Administrative Costs.** For CY 2007, **$1,281,100,000** is available to fund PHA administrative and other expenses related to the HCV program. Of this amount, up to $30,000,000 will be available to PHAs that need additional funds to administer this program as detailed below. Ongoing Administrative fees of $1,251,100,000 will be allocated for CY 2007 on-going administrative fees, which will be calculated on the basis of a PHA's CY 2006 fee eligibility plus adjustments for new units and transfers. Available fee funds will

be pro-rated as necessary.

(1) **<u>Homeownership Fees.</u>** Of the $30 million set-aside, HUD will distribute up to $2 million in additional administrative fees to support homeownership voucher program closings. A one-time fee of $1,000 will be paid for each homeownership closing during CY 2007 reported in PIC for a family participating in the homeownership voucher program, Section 8 Family Self-Sufficiency (FSS) program or the Moving to Work (MTW) program. The one-time $5,000 fee for implementing a homeownership voucher cannot be funded in CY 2007.

(2) **<u>Tenant Protection Fees.</u>** Up to $20 million, until depleted, will be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs, including administrative fees for HCVs related to new vouchers for HOPE VI and tenant protection actions. HAP and administrative fees will only be provided for occupied units in the affected project at the time of the PHA's application for such HCV funding. The Department will provide a one-time fee of $200 per tenant protection voucher related to housing conversion actions (which do not include HOPE VI and non-HOPE VI demolition/disposition actions) in CY 2007.

(3) **<u>Special Fees</u>**. Approximately $8 million will be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs.

(4) **<u>Other Provisions.</u>**

i. <u>Administrative Fees for Development Activities</u>. The 2006 Appropriations Act stipulated that administrative fees provided from this appropriation shall only be used for activities related to the provision of section 8 tenant-based rental assistance, including related development activities. Examples of related development activities include, but are not limited to; unit modification for accessibility purposes and development of project-based voucher units. Any administrative fees from 2007 funding (as well as 2004, 2005 and 2006 funding) that are subsequently moved into the Administrative Fee Equity account in accordance with GAAP at year-end must only be used for the same purpose.

ii. <u>Restrictions.</u> If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the Administrative Fee Equity account and may direct the PHA to use funds in that account to improve administration of the program or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

9. **<u>$100 million Set-Aside to Adjust PHA Baseline.</u>** The Revised CR 2007 provides that up to $100 million shall be available only: (1) for adjustments for PHAs that experienced a significant increase, as determined by the Secretary, in renewal costs resulting from unforeseen circumstances or from portability under Section 8(r) of the Act for tenant-based rental assistance; and (2) for adjustments for PHAs that could experience a significant decrease in voucher funding that could result in the loss of voucher units due to the shift to using VMS data based on a 12-month period. HUD will process requests first under the first proviso and, once funded; will move to adjustments pursuant to the second proviso. The Department will consider the following when determining PHA eligibility for funds under Category 1 and/or 2:

1) Category (1) eligibility provides for adjustments for PHAs that experienced a significant increase, defined as a 3 percent or more annually, in renewal costs resulting from unforeseen circumstances or from portability under Section 8(r) of the Act for tenant-based rental assistance. Since the CY 2006 portability costs were reported in VMS and, as such, those costs have already been annualized and included in the base, there is no additional funding to be provided for portability under this category. To be eligible for funding under this category, the **unforeseen circumstances must be substantiated with sufficient evidence for a HUD analyst to justify approval and determine a funding amount under this category. This evidence must be submitted along with the Attachment A to this Notice in the manner prescribed below**. The following are some, but not all, examples of unforeseen circumstances:

a. PHAs whose jurisdiction and tenants had experienced a severe loss of employment/income. PHAs will be required to submit documentation to support a request for funding under this provision.
b. PHAs thatwere required by a court to take actions that increased their per unit costs. PHAs will be required to submit documentation to support a request for funding under this provision.
c. PHAs thathave experienced significant increases in the cost of assistance due to an unforeseeable rise in rental costs. PHAs will be required to submit documentation to support a request for funding under this provision.
d. PHAs directed by HUD not to lease vouchers provided as a result of a housing conversion action, and in place during the baseline period, thatwere later required to lease those held vouchers. PHAs will be required to submit documentation to support a request for funding under this provision.
e. HOPE VI vouchers initially funded where the Department has been unable to renew due to restrictions in prior appropriations acts.

2) Category (2) eligibility includes PHAs that would experience a significant decrease in funding that could result in the loss of vouchers, due to the re-benchmarking. To determine eligibility under this category, the Department will compare the PHA's leasing from VMS, at the **higher** of the unit months leased in

December 2006 or the average of the last quarter, and will calculate the number of unit months the PHA would be able to lease based on the CY 2007 re-benchmarking funding allocation. If the difference is a decrease of 3 percent or more in the number of unit months the PHA would be able to lease in CY 2007 using the level of funding provided under the re-benchmarking funding allocation, the PHA will be eligible for funding under this category. **Although HUD will calculate theeligibility under th is category and a PHA does not need to submit any supporting documentation, the PHA must submit the required certification in Attachment A in the manner prescribed below.**

To be eligible for consideration of funds under category (1) and/or (2), the PHA must complete Attachment A to this Notice -- Application for $100 Million Set-Aside and submit it to the Department at the address below:

U.S. Department of Housing and Urban Development
Attn: Miguel A. Fontanez Sanchez, Director, Financial Management Division
Room 4232
451 7th Street, S.W.
Washington, DC 20410

The PHA's request must be received no later than close of business (5:00 p.m. EST) **July 6th, 2007**. **It is recommended that requests be sent using overnight mail** (USPS, UPS, Fed Ex, DHL, etc) that requires signature upon delivery. **Standard delivery mail will be accepted, however, it is important to note that non-expedited mail has no guaranteed delivery time.** Requests not received on time will not be processed. Faxes and electronic mail will not be accepted.

10. **Over-Leasing.** The 2007 Appropriations Act continues to prohibit the use of amounts provided for renewal funding from being used by any PHA for over-leasing. Although a PHA may not over lease its HCV units, it is also not required to lease up to its authorized baseline if it does not have the funding to do so.

    If a PHA engages in over-leasing, it must identify other sources to pay for the over-leasing, and the PHA must take immediate steps to eliminate any current over-leasing. PHAs should consult with their Public Housing field office staff for assistance in determining needed actions. HUD has no authority to provide funds to support unit months leased in excess of the PHA's baseline units under ACC and will not do so.

11. **Quality Assurance**. The Department will continue to deploy Quality Assurance (QA) teams to conduct on-site reviews of PHAs to ensure the integrity of PHA-reported data for the HCV program, as well as to ensure compliance with other program requirements, including over-leasing. QA staff will also review compliance with rent reasonableness requirements to ensure that owners are receiving rents that are comparable to similar unassisted units in the market. The allocations already include approximately 37 adjustments to PHA allocations as a result of QA reviews and the allocations are subject to further adjustments if a future QA review warrants such adjustments.

12. **PHA Requirements.**

A. PHAs may only use CY 2007 HAP funding for housing assistance payments, and only for CY 2007 and future CY HAP needs. PHAs must continue to submit required financial documents including, but not limited to, quarterly VMS electronic submissions. PHAs will receive monthly disbursements based on their budgetary allocations from HUD on a CY basis. PHAs may request adjustments to monthly disbursements, not to exceed their annual budgetary allocations, by contacting their financial analyst at the Financial Management Center (FMC). PHAs may not use HAP funds for administrative expenses.

B. PHAs must manage their programs in a prudent manner to enable them to serve families within their CY 2007 allocations and voucher baselines. PHAs should review their policies and operations to ensure they are not incurring costs beyond what is needed to support decent housing of a modest nature within market rents for HCV participants.

C. The 2006 Appropriations Act provided that incremental vouchers under the One-Year Mainstream program previously made available for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover. This requirement continues for CY 2007.

D. The 2006 Appropriations Act provided that incremental vouchers previously made available for family unification shall, to the extent practicable, continue to be provided for family unification. This requirement continues for CY 2007.

E. PHAs must continue to submit financial data electronically to the Financial Assessment Subsystem (FASS). For the HCV program, PHAs with fiscal years ending on or after September 30, 2006, the Financial Data Schedule (FDS) will include two memo accounts called Administrative Fee Equity Account and HAP Equity Account, which must be filled out by the PHA as part of the FDS submission. Further instructions will be provided by REAC. PHAs with fiscal years ending on or after January 1, 2006, but before September 30, 2006, will be expected to maintain this information as part of their internal records.

F. As provided by 24 CFR § 982.152(d), PHAs that fail to meet the requirements in E above will be subject to administrative actions including, but not limited to; an imposition of a 10 percent penalty against a PHA's monthly administrative fees for failure to comply with reporting requirements until such time as the PHA complies with these requirements. This penalty represents a permanent reduction for the current calendar year that shall not be reversed; however, this will not impact the baseline calculations.

13. **Restrictions on HAP Equity Accounts:** PHAs are reminded that funds in the Net Cumulative HAP Equity account (formerly known as Undesignated Fund Balance – HAP) generated from CY 2005 and later appropriations may only be used for HAP needs in that year and future CY HAP needs of the HCV program, keeping in mind current and any future restrictions on over-leasing. Calendar year funds **may not be used to cover any prior year**

deficits. However, PHAs may use funds in the Administrative Fee Equity account for such purposes.

14. **Excluded Programs.** The changes implemented by this Notice do not apply to renewal funding for the Section 8 Moderate Rehabilitation Program or Five-Year Mainstream vouchers.

15. **MTW.** MTW agencies will continue to have their funding determined pursuant to their MTW agreements. HUD is directed by the Act, however, to apply the same pro-ration factor to the HCV budgets for MTW agencies as is applied to all other PHAs.

Paperwork Reduction Act.

The additional information collection requirements contained in this document are pending approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB control number is 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.

Any questions concerning this Notice should be directed to the Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, at (202) 708-2934 (this is not a toll-free number).

/s

Orlando J. Cabrera, Assistant Secretary
for Public and Indian Housing

ATTACHMENT A – Application for $100 Million Set-Aside

Name of PHA:
PHA Number:
Executive Director:

CHECK ALL BOXES THAT APPLY

______Category (1): I certify that ______________________________ (PHA name and number) has experienced a significant increase in renewal costs resulting from unforeseen circumstances.

The following evidence is presented to substantiate the request for funding and to determine a funding amount under Category 1 of the $100 Million Set-Aside:

Enter information here or attach additional information and funding calculations to this Certification. This certification must be signed by the appropriate PHA official and returned.

___Category (2): I certify that _________________________ (PHA name and number) would experience a significant decrease in funding that could result in the loss of vouchers, due to the provisions of the Revised CR 2007 (Public Law 110-5) "re-benchmarking". This certification must be signed by the appropriate PHA official and returned.

Certification: I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3279, 3802)

____
Signature of Executive Director and Date

____
Contact Name and Phone Number