



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

Special Attention of:
Regional and Field Office Directors of Public
Housing; Section 8 Financial Management
Center; Public Housing Agencies Administering
Housing Choice Voucher Programs; Regional
Directors; State and Area Coordinators

Notice PIH 2005-30 (HA)

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Cross References:

HUD Notice PIH 2003-23

FMC Bulletin #07-04

Subject: Revised Implementation of the Housing Choice Voucher Program Administrative Fee Reduction and Recapture Provisions of the Fiscal Year 2003 Appropriations Act

- 1. Purpose.** This Notice sets forth HUD's revised implementation of the Housing Choice Voucher program administrative fee provisions of the HUD Fiscal Year 2003 Appropriations Act ("2003 Act"), Pub.L. No. 108-7, 117 Stat. 11, and serves as a correction and revision to the previously published Financial Management Center (FMC) Bulletin #07-04, published August 26, 2004. Specifically, this Notice retracts the paragraph entitled "105% Administrative Fee Adjustment Update" of that FMC Bulletin.¹ The revised implementation and the administrative fee provisions discussed in this Notice only apply to Calendar Year 2003 administrative fees. Administrative fees provided for subsequent years (e.g., Calendar Years 2004 and 2005) are not affected by this Notice or the administrative fee provisions of the 2003 Act. This Notice supersedes the information provided on administrative fee payment reductions and recaptures contained in HUD Notice PIH 2003-23.
- 2. Background.** The 2003 Act includes the following requirements with respect to administrative fees for the housing choice voucher program:

¹ The paragraph that is the subject of the retraction was as follows: "As required by the HUD FFY 2003 Appropriations Act, on-going administrative fees for the HA FY 2003 are to be reduced by that portion of the available administrative fee reserve balance as of 1/31/03 that exceeds 105% of the administrative fees earned by the HA in FFY 2002. When the adjustments were first made by HUD, they were applied for the months of May through December, 2003. HUD attorneys have determined that Congress intended the adjustment to be applied to all funding during calendar year 2003. This is a change to what was previously communicated to affected HAs. Accordingly adjustments will have to be applied retroactively for the months of January through April, 2003. The adjustment reconciliation will be made beginning with January, 2003, rather than April, 2003. The adjustment will be applied for each month until the total amount of fees to be withheld is satisfied or until December 2003, whichever is earlier. Amounts not previously collected due to this change will be handled during the year-end settlement process. This reconciliation will be applied to the next settlement statement to be approved by HUD."

Shortly after issuance of this bulletin, however, HUD determined that implementation of it should not proceed since it became apparent that further review of the administrative fee provisions in the 2003 Act was necessary.

“...*Provided*, That, the fee otherwise authorized under section 8(q) of the Act shall be determined in accordance with section 8(q), as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act of 1998: *Provided further*, That none of the funds made available in this paragraph shall be provided to any public housing agency unless such agency reports to the Secretary the amounts remaining available as of January 31, 2003 in such agency’s administrative fee account: *Provided further*, That, notwithstanding any other provision of law or regulation, the amount of fiscal year 2003 fee payments otherwise authorized pursuant to the first proviso in this paragraph for a public housing agency shall be reduced accordingly by any such amounts remaining in such agency’s administrative fee reserve account as of January 31, 2003 which exceed 105 percent of the amount of fees paid to such agency from funds made available in fiscal year 2002: *Provided further*, That the preceding proviso shall not apply to any public housing agency if the amount of fiscal year 2003 payments otherwise authorized to be provided to such agency pursuant to the first proviso in this paragraph does not exceed \$100,000: *Provided further*, That, hereafter, the Secretary shall recapture any funds provided in this paragraph from a public housing agency which are in excess of the amounts expended by such agency for the section 8 tenant-based rental assistance program and not otherwise needed to maintain an administrative fee reserve balance of not to exceed 5 percent...”

This Notice supersedes all other HUD policies and procedures on the implementation of the administrative fee payment reductions and recaptures required by the 2003 Act, including the information provided on administrative fee payment reductions and recaptures contained in HUD Notice PIH 2003-23.

- 3. Revised Implementation of the Administrative Fee Payment Reductions and Recaptures Required by the 2003 Act.** HUD’s revised implementation of the administrative fee payment reductions and recaptures required by the 2003 Act is as follows.
- a. The baseline fee payment amount authorized by the first proviso of the administrative fee paragraph in the 2003 Act will be calculated using a calendar year measurement period, but beginning with the day the 2003 Act was enacted, and terminating at the end of calendar year 2003 (i.e., February 20, 2003 through December 31, 2003).
 - b. Pursuant to the third proviso of the administrative fee paragraph in the 2003 Act (“the reduction provision”), the resulting baseline fee payment amount will be reduced by the amount by which the administrative fee reserve amount as of January 31, 2003, exceeds 105 percent of the amount of fees paid to the public housing agency (PHA) for calendar year 2002 (to be referred to as “excess AF reserve amount”). However, the reduction provision is inapplicable to PHAs where the baseline fee payment amount authorized by the first proviso is \$100,000 or less for the period from February 20, 2003 through December 31, 2003.
 - c. In accordance with the second proviso of the administrative fee paragraph in the 2003 Act, PHAs that failed to report their fee reserve balances are prohibited from

- receiving any of the funds made available to HUD by the 2003 Act for the administrative fees and expenses of PHAs administering the Housing Choice Voucher program.
- d. Under the fifth proviso of the administrative fee paragraph in the 2003 Act (the “recapture provision”), HUD will recapture any administrative fees paid to a PHA from amounts made available in the 2003 Act (the fees paid for the period from May 1 through December 31, 2003), after taking into account any such fees subject to the reduction provision (see paragraph b above), to the extent (1) such fees exceed the PHA’s administrative expenses for the same period, and (2) the combined total of such excess fees plus the administrative fee reserve balance as of December 31, 2003 exceeds 5 percent of the administrative fees paid to the PHA for the period.
4. **Differences between the Revised Implementation and HUD Implementation Actions to Date.** This revised implementation is different in a few respects from the implementation actions that have taken place so far. Also, the most recent available data will be used as the revised implementation proceeds.
- a. The excess AF reserve amount (i.e., the fee payment reduction) was previously calculated based on the amount by which the PHA’s administrative fee reserves as of January 31, 2003 exceeded 105 percent of the amount of fees paid to the PHA for Federal fiscal year 2002 (as opposed to the calendar year 2002 measurement period to be applied under HUD’s revised implementation). Since the Housing Choice Voucher program has been funded on a calendar year basis, it has been determined that the reduction provision, including the calculation of the excess AF reserve amount, should also be applied on a calendar year basis. However, the change from a federal fiscal year to a calendar year measurement period for purposes of calculating the excess AF reserve amount should generally have minimal effect on PHAs. The calculation of the excess AF reserve amount is still based on twelve months of fees, but just a partially different set of twelve months.
- b. HUD had previously reduced (from amounts made available under the 2003 Act) only the fee payments that were actually obligated between May 1, 2003 and December 31, 2003, as opposed to fee payments between the Act’s effective date of February 20, 2003 and December 31, 2003, the time period that will be used under HUD’s revised implementation. Although HUD has now determined that the reduction provision should be applied on a calendar year basis, it will apply only prospectively from the effective date of the 2003 Act (February 20, 2003) forward, since the statutory language does not require retroactive application to the beginning of the calendar year. The reduction provision applies from the effective date of the 2003 Act until the end of the 2003 calendar year funding cycle, regardless of the source of funds used during that time to make the administrative fee payments. Unlike the second and fifth provisos in the administrative fee paragraph in the 2003 Act, there is no language that explicitly ties the reduction provision to the money made available by the 2003 Act. Only those PHAs where the AF reserve amounts exceeded eight months worth of administrative fees will be affected by this change in the initial implementation date.

- c. HUD previously applied the reduction provision to PHAs that were paid more than \$100,000 in fees for Federal fiscal year 2003 (as opposed to the time period from February 20, 2003 through December 31, 2003 which will be used under HUD's revised implementation). Again, although the reduction provision, including this related proviso, will be applied on a calendar year basis, it will apply only prospectively from the effective date of the 2003 Act (February 20, 2003) forward, since the statutory language does not require retroactive application to the beginning of the calendar year. By shortening the period of time to which the \$100,000 threshold is applied, some PHAs that previously had their fees reduced will now have no reduction of fees under the revised implementation.
- d. HUD previously intended to implement the recapture (fifth) proviso of the administrative fee paragraph in the 2003 Act (and in a very few cases did implement it) based on the full 2003 calendar year. However, this proviso, like the second proviso of the administrative fee paragraph, contains language that explicitly ties the requirement for the fee recapture to the money made available by the 2003 Act, and the only time period during which funds provided under the 2003 Act were paid to PHAs for administrative fees was between May 1 and December 31, 2003. Accordingly, HUD has determined that the recapture provision should apply only to fees and expenses during that time period. By shortening the period of time to which excess funding is calculated to May through December 2003, PHAs will have fewer fees subject to the recapture provision. In other words, some PHAs that had fees recaptured, or previously would have been subject to having their fees recaptured, will now have fewer or no fees recaptured under the revised implementation.
5. **Adjustments to the 2003 Administrative Fee Funding Calculations.** HUD's revised implementation of the reduction and recapture provisions will require adjustments to the 2003 administrative fee funding calculations. This action may result in either an increase or decrease in administrative fee funds for some PHAs. To the extent these revised funding calculations result in either a reduction or an increase in administrative fee funding, HUD will adjust those amounts as necessary and appropriate. PHAs subject to such adjustments will be notified by mail.

The attachment to this Notice illustrates HUD's revised implementation of the administrative fee reduction and recapture provisions of the 2003 Act. The attachment includes hypothetical examples where the provisions are applied.

6. **Further Information.** Any questions concerning this Notice should be directed to the PHA's assigned Financial Management Center (FMC) Financial Analyst.

/s/

Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

ATTACHMENT

Reductions:

Will be calculated on a calendar year basis starting on February 20, 2003 (the date 2003 Act was signed) and ending on December 31, 2003.

- No reduction if the administrative fee amount calculated in step 3, below, for a PHA for the period 2/20/2003 – 12/31/2003 is equal to or less than \$100,000.
- No fees can be paid from amounts appropriated in the 2003 Act to PHAs that did not report Administrative Fee reserves as of 01/31/2003.

Step 1: Calculate fees 8(q) pre-QHWRA for the period 1/1/2002 through 12/31/2002.

Step 2: Compile administrative fee reserve balances as reported by PHAs as of 01/31/2003.

Step 3: Calculate fees 8(q) pre-QHWRA for the period 2/20/2003 through 12/31/2003.

Step 4: If the administrative fee reserve balance as of January 31, 2003, as compiled in Step 2 above, exceeds 105 percent of the calendar year 2002 fee amount calculated in Step 1, above, AND the administrative fee amount calculated in step 3, above, for a PHA for the period 2/20/2003 through 12/31/2003 exceeds \$100,000, then reduce such administrative fee amount calculated in step 3, above, for the PHA by such excess amount, but only up to and not exceeding the administrative fee amount calculated in step 3, above, for the PHA.

Example 1:

- Calendar year 2002 administrative fees = \$120,000
- Reported administrative fee (AF) reserves as of 1/31/2003 = \$500,000
- AFs for period 2/20/2003 – 12/31/2003 = \$113,918

The \$500,000 AF reserve as of 1/31/2003 exceeds 105% of the CY 2002 fees paid to the PHA [\$126,000 (\$120,000 x 105%)] by \$374,000, AND the administrative fee amount calculated in step 3, above, for the PHA for the period 2/20/2003 through 12/31/2003 is more than \$100,000 (\$113,918 in this example). Therefore, the amount calculated in step 3 for the PHA must be reduced. Although the excess AF reserves amount is \$374,000, the reduction is limited to the amount calculated in step 3, above, for the PHA for the period 2/20/2003 through 12/31/2003, or \$113,918. As a result, HUD will reduce such amount by \$113,918 for 2003, which will leave the PHA with zero 2003 funding for that period.

Example 2:

Same fact pattern as in Example 1 but the AF reserves as of 1/31/2003 are \$200,000.

- Calendar year 2002 administrative fees = \$120,000
- Reported administrative fee (AF) reserves as of 1/31/2003 = \$200,000
- AFs for period 2/20/2003 – 12/31/2003 = \$113,918

The \$200,000 AF reserve as of 1/31/2003 exceeds 105% of the CY 2002 fees paid to the PHA [\$126,000 (\$120,000 x 105%)] by \$74,000, AND the fee amount calculated in step 3, above, for the PHA for the period 2/20/2003 through 12/31/2003 is more than \$100K (\$113,918 in this example). Therefore, the excess AF reserve amount to be reduced is the \$74,000, since that amount is less than the amount calculated in step 3, above, for the PHA for the period 2/20/2003 through 12/31/2003, or \$113,918. As a result, HUD will reduce the amount calculated in step 3, above, for the PHA by \$74,000, which will leave the PHA with \$39,918 (\$113,918 - \$74,000) in funding for that period.

Recaptures:

Will be calculated over the period within which funds made available in the 2003 Act were used, which was for the period May 1, 2003 through December 31, 2003.

Step 1: Calculate fees 8(q) pre-QHWRA for the period 5/1/2003 through 12/31/2003.

Step 2: Calculate fees after reduction.

Step 3: Obtain administrative expenses from Voucher Management System (VMS) for the same measurement period (5/1/2003 through 12/31/2003).

Step 4: Calculate excess funding for the period 5/1/2003 through 12/31/2003.

Step 5: Calculate 5 percent of fees calculated in step 1, above.

Step 6: Compare the 5 percent threshold to the beginning reserve balance and determine the portion of excess funding to be recaptured, if any.

Example 3:

- Fees calculated in step 1, above = \$90,000.
- Reduction due to 105% provision = \$90,000.
- Administrative Expenses 5/1/2003 through 12/31/2003 from VMS = \$85,500.
- Beginning AF Reserve = \$100,000.

Step 1: Fees calculated in step 1 above = \$90,000.

Step 2: Calculate fees after reduction: \$90,000 - \$90,000 = \$0.

Step 3: Administrative Expenses = \$85,500.

Step 4: Calculate excess funding for the period 5/1/2003 through 12/31/2003.

$$\$0 - \$85,500 = (\$85,000)$$

Since the excess is negative, there is no recapture.

Example 4

Same fact pattern as Example 3, except the reduction due to the 105% provision and the beginning AF Reserve are both 0.

- Fees calculated in step 1, above = \$90,000.
- Reduction due to 105% provision = \$0
- Administrative Expenses 5/1/2003 through 12/31/2003 from VMS = \$85,500.
- Beginning AF Reserve = \$0.

Step 1: Fees calculated in step 1, above = \$90,000.

Step 2: Calculate fees after reduction: \$90,000 - \$0 = \$90,000.

Step 3: Administrative Expenses = \$85,500.

Step 4: Calculate excess funding for the period 5/1/2003 through 12/31/2003.

$$\$90,000 - \$85,500 = \$4,500$$

Step 5: Calculate 5% of fees calculated in step 1, above:

$$\$90,000 \times 5\% = \$4,500$$

Step 6: Compare the 5% threshold to the beginning reserve balance:

$$\begin{aligned} 5\% \text{ Threshold } \$4,500 &> \text{ Beginning Reserve } \$0 \\ \text{Amount that may be added to reserves: } & \$4,500 - 0 = \$4,500. \end{aligned}$$

Since the beginning reserves of \$0 is less than the 5% threshold of \$4,500, by \$4,500, up to \$4,500 of excess funding may be added to the reserves before recapturing any funding. In this example the entire excess funding amount of \$4,500 is retained by the PHA.

Example 5

Same fact pattern as Example 4, except the reduction due to 105% provision is \$10,000, the administrative expenses 5/1/2003 through 12/31/2003 from VMS are \$75,000, and the beginning AF Reserve is \$400,000.

- Fees calculated in step 1, above = \$90,000.
- Reduction due to 105% provision = \$10,000.

- Administrative Expenses 5/1/2003 through 12/31/2003 from VMS = \$75,000.
- Beginning AF Reserve = \$400,000.

Step 1: Fees calculated in step 1, above = \$90,000.

Step 2: Calculate fees after reduction: \$90,000 - \$10,000 = \$80,000.

Step 3: Administrative Expenses = \$75,000.

Step 4: Calculate excess funding for the period 5/1/2003 through 12/31/2003.

$$\$80,000 - \$75,000 = \$5,000$$

Step 5: Calculate 5% of fees calculated in step 1, above:

$$\$90,000 \times 5\% = \$4,500$$

Step 6: Compare the 5% threshold to the beginning reserve balance:

5% Threshold \$4,500 < Beginning Reserve \$400,000

Amount that may be added to reserves: \$0

Excess funds to be recaptured:

$$\text{Excess funds: } \$5,000, \text{ less funds added to reserves: } \$0 = \$5,000.$$

Since the beginning reserves of \$400,000 are greater than the 5% threshold of \$4,500, no excess funding may be added to reserves. Instead the entire excess amount of \$5,000 must be recaptured.

Example 6

Same fact pattern as Example 5 above except that beginning reserves are only \$1,000.

- Fees calculated in step 1, above = \$90,000.
- Reduction due to 105% provision = \$10,000.
- Administrative Expenses 5/1/2003 through 12/31/2003 from VMS = \$75,000.
- Beginning AF Reserve = \$1,000.

Step 1: Fees calculated in step 1, above = \$90,000.

Step 2: Calculate fees after reduction: \$90,000 - \$10,000 = \$80,000.

Step 3: Administrative Expenses = \$75,000.

Step 4: Calculate excess funding for the period 5/1/2003 through 12/31/2003.

$$\$80,000 - \$75,000 = \$5,000$$

Step 5: Calculate 5% of fees paid before reduction:

$$\$90,000 \times 5\% = \$4,500$$

Step 6: Compare the 5% threshold to the beginning reserve balance:

$$5\% \text{ Threshold } \$4,500 > \text{Beginning Reserve} = \$1,000$$

$$\text{Amount that may be added to reserves: } \$4,500 - \$1,000 = \$3,500$$

Excess funds to be recaptured:

$$\text{Excess funds: } \$4,500 \text{ less funds added to reserves: } \$3,500 = \$1,000.$$

Since the PHA may add \$3,500 of excess funding to reserves, only \$1,000 will be recaptured.