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

Notice PIH 2003-23 (HA)

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

Issued: September 22, 2003
Expires: September 30, 2004

Cross References: Federal Register Notice FR-4459-F-03, Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program, Formula for Allocation of Housing Assistance; 24 CFR Part 982, Subparts C and D; Notice PIH 2002-06 Housing Choice Voucher Annual Contributions Contracts.

Subject: Implementation of FFY 2003 Omnibus Appropriations Act Provisions for the Housing Choice Voucher Program.

1. **PURPOSE** – This Notice implements changes to the funding of the Housing Choice Voucher Program resulting from the Federal Fiscal Year (FFY) 2003 Omnibus Appropriations Act (Public Law 108-7), which was signed into law on February 20, 2003. In this law, Congress revises the method of calculating renewal funds, separates funding for Housing Assistance Payments (HAP) from funding for public housing agency (PHA) administrative expenses, appropriates funds for a central fund and for administrative expenses, and prohibits the use of FFY 2003 funds for over-leasing.

   The requirements of the FFY 2003 Appropriations Act, as described in this Notice, supersede any other notice or regulation to the extent that such notice or regulation is inconsistent with the law. Specifically, this Notice supersedes relevant sections of Federal Register Notice FR 4459-F-03, Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program, Formula for Allocation of Housing Assistance; 24 CFR Part 982, Section 982.102. Specific changes are discussed in this Notice, and a revised Federal Register Notice will be published at a later date

2. **BACKGROUND** - Congress has enacted the changes set forth in this Notice in order to fund each PHA's Housing Choice Voucher Program at a level that more closely reflects actual funding needs. The appropriation is also intended to allow sufficient flexibility for PHAs to increase voucher usage, up to the authorized level – i.e., the number of units reserved. The changes are intended to avoid the provision of funds in excess of actual needs.

3. **RENEWAL FUNDING FOR HAP COSTS** – Before the FFY 2003 Appropriations Act, HUD provided renewal funding for every voucher unit reserved for a PHA, each time the term of the funding increment supporting that voucher expired. The funding amount was based on the actual costs incurred by the PHA, as reported on its most recent year-end

settlement, adjusted by applying the Annual Adjustment Factor(s) (AAF) for the intervening period(s). Because many PHAs did not lease up every reserved voucher, this method of calculation resulted in PHAs receiving funding in excess of actual needs and in the accrual of substantial Annual Contribution Contract (ACC) reserves.

Renewal calculations under the FFY 2003 Appropriation will be based on the total number of unit months under lease and actual cost data, as reported on the PHA's most recent year-end settlement or as subsequently submitted to HUD by the PHA. Actual costs will be adjusted by applying the AAFs. Expiring voucher funding increments will generally be renewed for terms of three months. The use of the most recent leasing and cost data and the short renewal terms will enable HUD to calculate funding more accurately than the previous procedures allowed. This new method of calculating funds for contract renewal began with the increments expiring on April 30, 2003. An example of the calculation of funding is provided as Attachment 1 to this Notice.

The format and procedure for PHAs to submit leasing and cost data subsequent to the date of the latest year-end settlement are provided by form HUD-52681B, FY 2003 Data Collection – Housing Choice Voucher Program. PHAs were previously notified of this new form and the reporting requirements. This Notice includes additional information. Data each PHA submits on this report concerning actual unit months leased and costs will be used to calculate funding for each renewal period. If a PHA does not submit data when due, HUD will base renewal funding calculations on the most recent data submitted by the PHA.

As part of each calculation of renewal funding, HUD will examine the total unit months leased by each PHA during its current fiscal year. If the unit months leased and projected leasing for the balance of the PHA fiscal year exceed the total unit months available for the PHA fiscal year, renewal funding will be capped at a level to support leasing of only the unit months available for the fiscal year. This procedure is required because the FFY 2003 Appropriations Act does not permit use of FFY 2003 funds to support over-leasing. An example of the calculation of renewal funding where a cap applies is provided as Attachment 2 to this Notice.

4. **RENEWAL FUNDING FOR ADMINISTRATIVE COSTS –** Before the FFY 2003 Appropriations Act, renewal funds for HAP costs and for administrative costs were provided from a single appropriation. Funds for both purposes were provided by funding a per-unit cost that included all eligible program expenses. PHAs were permitted to use a portion of the total funding to pay their administrative fees, based on unit months leased on the first day of each month and the applicable per-unit fee from tables published by HUD.

Under the FFY 2003 Appropriations Act, funding for administrative fees will be separately calculated and obligated. Administrative fee funds will be calculated for the same number of unit months for which renewal HAP funds are calculated for the same period, but the obligation may be reduced as set forth below in this section. At the end of each PHA fiscal year, on-going administrative fees earned will continue to be calculated for each unit assisted as of the first date of each month and will be based on administrative fee tables published annually in the Federal Register. The fees for FFY 2003 were published in the Federal Register on May 6, 2003. PHAs are not permitted to use any amounts provided for administrative fees to pay themselves a fee for over-leased units.

PHAs were previously informed of a new reporting requirement on form HUD 52681B. That form includes the reporting of the amount remaining available in the Administrative Fee Reserve as of January 31, 2003, as required by the FFY 2003 Appropriations Act. Since May 1, 2003, HUD has suspended the obligation and payment of administrative fees for any PHA that has not reported this available amount as required.

Pursuant to the requirements of the FFY 2003 Appropriations Act, on-going administrative fees for PHA FY 2003 will be reduced by that portion of the available administrative fee reserve balance as of January 31, 2003, that exceeds 105 percent of the administrative fees earned by the PHA in FFY 2002. HUD has calculated this amount for each PHA and is reducing the obligation of fee amounts as needed. In some cases, HUD may adjust the amount of monthly disbursements on a PHA's approved payment schedule to reflect the reduced fees to be paid. PHAs will be notified of any such adjustments. At the end of their FYs, PHAs will continue to report the total on-going fee earned, as calculated per the administrative fee tables. The Department will apply any reduction against the year-end settlement, until the available administrative reserve balance is no more than 105% of the FFY 2002 fees earned. This requirement applies only to those housing agencies whose earned on-going administrative fees in PHA FY 2003 exceed $100,000. Because of this requirement, during their FY 2003, PHAs are advised not to spend for other purposes those available administrative fee reserve balances that exceed 105 percent of their FFY 2002 fees earned.

5. **CENTRAL FUND** - The FFY 2003 Appropriations Act authorizes a central fund, to be maintained by the Department. The central fund is used to fund contract amendments to support voucher units that are authorized in a PHA's

reserved baseline but that were not under lease as of the latest reported data and, therefore, were not included in the renewal calculation. The central fund will also be used to fund amendments needed because of significant increases in the per-unit cost of baseline vouchers, as compared to the cost used in the renewal calculation.

A PHA qualifies to request funding from the central fund if executed HAP contracts obligate all Annual Budget Authority (ABA) (minus any FFY 2003 ABA provided for administrative fees) and the PHA has expended fifty percent (50%) of the authorized ACC reserve level. The authorized ACC reserve level for this purpose is defined as the average monthly HAP cost of the PHA's Voucher program, based on the most recent six months' of HAP data submitted by the PHA.

To request funds from the central fund, a PHA must submit the following documents to the Section 8 Financial Management Center:

a. Budget Revision, forms HUD 52672, 52673, and 52663, if projected contributions required exceed the currently approved budget;
b. Calculation of program reserve balance as of the end of the most recent month;
c. Payment Standard Schedule;
d. Narrative explanation of the reasons for the increased costs;
e. Form HUD-52681B to include every unreported month that has ended at the time the request is submitted.

To calculate the ACC reserve balance, the PHA must begin with the balance approved by HUD on the most recently closed year-end settlement, add the Budget Authority applicable to each month since that date, and subtract the disbursements for each month. HUD will review these calculations, and assure as well that any recaptures or restorations are included.

The Department will respond to a PHA's request and will obligate any additional HAP funds as HUD determines necessary within 30 days of receiving a complete document package. Funds will generally be provided to cover the difference between the current monthly Budget Authority for HAP and the PHA's actual needs for authorized units, based on current leasing and cost data. Separate funding will be provided for needs due to increased lease-up and for needs due to higher per unit costs.

Funding from the central fund will be based only on actual costs incurred by a PHA. The PHA may not, and the Department will not, project future costs in order to calculate the additional funding required. In accordance with the Appropriations Act, no funds will be provided from the central fund unless the PHA has obligated through HAP contracts its monthly Budget Authority provided for HAP costs and has already expended 50% of its authorized ACC reserve level. If a PHA is able to cover the costs of all reserved baseline Vouchers that are under lease, no funds will be provided from the central fund, regardless of the level of the PHA's ACC reserve. The annual process by which HUD assesses each PHA's ACC reserve level and restores reserves if appropriate is discussed in Paragraph 9 of this Notice.

Any requests for funds from the central fund must be submitted prior to the end of a PHA's fiscal year.

6. **REQUIREMENTS FOR ADDITIONAL ADMINISTRATIVE FEE FUNDS** – A PHA that receives funding from the central fund because of additional lease-up within the reserved baseline may also need additional funds for the administrative fees associated with the increased lease-up. These additional amounts will be determined by HUD and provided from the funds appropriated for administrative fees.

7. **MAXIMIZED LEASING** - Before the FFY 2003 Appropriations Act, Department policy permitted a PHA to temporarily increase the number of households assisted, beyond the baseline number of reserved units. This could be done if the PHA had sufficient Annual Budget Authority to cover the costs associated with these additional households during the PHA fiscal year. This was termed maximized leasing. In the next PHA fiscal year, the PHA was permitted to use available ACC reserves to continue assisting these households while the PHA's overall program size was reduced, through normal attrition, to the authorized, baseline level. The FFY 2003 Appropriation does not permit PHAs to continue the practice of maximized leasing. FFY 2003 funds may only be used for the cost of vouchers within the authorized level.

   If a PHA that engaged in maximized leasing does not have available ACC reserves from pre-2003 appropriations, administrative fee reserves, or other sources to continue to pay for the maximized leasing, the PHA must take immediate steps to eliminate any current maximized leasing, to ensure that unit months leased for its current fiscal year do not exceed unit months available for authorized, baseline vouchers.

8. **OVER-LEASING** – Over-leasing is defined as unit months leased in excess of unit months available for authorized baseline vouchers for the PHA fiscal year.

   No funds appropriated in FFY 2003 may be used by any PHA to lease more units than are authorized for that PHA. Each PHA must take immediate steps to eliminate any current over-leasing, so that unit months leased for its

FY 2003 do not exceed unit months available.

Effective with PHA fiscal years ending June 30, 2003, any over-leasing expenses must be covered by existing ACC reserves from pre-2003 appropriations, administrative fee reserves or funds already available to the PHA prior to the FFY 2003 appropriation. PHAs that are over-leased must take whatever steps are necessary to ensure that any over-leasing that cannot be supported from these sources is eliminated. PHAs should consult with their Public Housing field office staff for assistance in determining needed actions. Any costs for over-leasing will be disallowed from FFY 2003 funds on the year-end settlement.

9. **ACC RESERVE ACCOUNT –** The authorized level of a PHA's ACC reserve account (as described in 24 CFR 982.154) was previously established at one month of program costs. Heretofore, HUD has defined that as the average expenditures for one month, based on the PHA's approved budget for their fiscal year. The FFY 2003 Appropriations Act provides separate funding for HAP costs and for administrative and other costs. As a result, the ACC reserve will henceforth need to cover only those HAP costs that exceed Annual Budget Authority available for HAPs in the current PHA fiscal year. In FFY 2003, the authorized level of a PHA's ACC reserve is established at one month of HAP costs alone, not including administrative fee costs. The calculation of one month of HAP costs will be based on the average of the most recent six months' of data provided by the PHA. If the PHA has not provided monthly data on form HUD-52681B, HUD will determine the one month reserve level on the basis of the latest year-end settlement approved by HUD.

ACC reserves generated from FFY 2003 appropriated funds may be used to cover HAP costs, for authorized units, which exceed Annual Budget Authority. The ACC reserves from FFY 2003 funds may not be used to assist any units above the baseline or continue to assist any units currently in lease above the baseline.

If Appropriations are available, HUD intends to annually restore ACC reserves for each HA to the one-month level. HUD will not restore ACC reserves that were depleted due to PHA over-leasing in the PHA's most recently closed fiscal year.

10. **ADMINISTRATIVE FEES RECAPTURE –** In accordance with the FFY 2003 Appropriations, at the close of each PHA fiscal year in which the PHA received administrative fee funds from the FFY 2003 Appropriation, HUD will recapture FFY 2003 administrative fees that exceed administrative costs. However, any portion of the excess fees needed to maintain an Administrative Fee Reserve equivalent to five percent of the fees earned for the fiscal year will not be recaptured. Each affected PHA will be informed of the amount of the recapture, which will be accomplished by reducing fees earned. Examples of the calculation of this reduction are provided as Attachment 3 to this Notice.

11. PHA REQUIREMENTS -

A. PHAs must continue to submit annual budgets, requisitions, and year-end settlements. HUD will use PHA reporting of actual leasing and costs, as described in this Notice, to calculate quarterly renewal funding. PHAs will continue to receive monthly disbursements from HUD on the basis of budgets and requisitions submitted by the agencies and approved by HUD. HUD will compare approved requisition amounts to actual costs subsequently incurred and reported, and may reduce payments if they are not in alignment with actual costs. PHAs will be notified in advance of any payment reductions. Adequate program funding depends on PHAs' timely submission of the quarterly reports and the year-end settlement documents.

B. PHAs must ensure that unit months leased each fiscal year do not exceed units months available for authorized baseline units. In order to achieve full utilization, PHAs may issue vouchers in excess of their baseline. However, HUD will not provide funds for unit months leased in excess of the number of unit months available for authorized baseline vouchers during the PHA fiscal year.

C. PHAs must electronically submit form HUD-52681B when due. The initial submittal of Part 1, covering the months of August 2002 through January 2003, was due to HUD by April 9, 2003. Subsequent submittals are due for every future month, according to a schedule HUD will provide. The Department will use the latest data provided by each HA in these submittals to calculate the PHA's renewal funding needs every quarter. If a PHA does not submit data for each month when due, HUD will base renewal funding calculations on the latest data that was submitted.

D. PHAs are responsible for reviewing their per unit costs and units leased on a regular basis and for determining when to submit a request for funding from the central fund, to cover additional units leased within the baseline and/or significantly increased program costs.

12. REGULATIONS AND NOTICES SUPERSEDED - The FFY 2003 Appropriations Act supersedes the following provisions of 24 CFR 982.102:

- Determining number of renewal units: The budget authority allocated for renewal of an expiring funding increment will no longer be based on the number of reserved units, (as provided for at 24 CFR 982.102(c)(1) and (d)), but will be based on the number of units leased.
- Determining per unit cost: The program expenditures upon which the per unit HAP cost is determined will no longer be based on the most recent HUD-approved year-end settlement, (as provided for at 24 CFR 982.102(e)(1)), but will be based on the most recent actual costs reported by the PHA, generally on form HUD-52681B.

Renewal policy before enactment of the FFY 2003 Appropriations Act was provided in PIH Notice 2002-06. This Notice expired on March 31, 2003. Those provisions that are not superseded by the FFY 2003 Appropriations or otherwise inconsistent with the terms of this Notice are re-established in this Notice and include:

- The authorized ACC reserve level is one month of expenditures, as further defined in this Notice.
- ACC reserves may be used to cover expenditures resulting from increased per-unit costs of the authorized baseline number of units.
- PHAs may issue vouchers in excess of their authorized units, in order to achieve full utilization of the baseline number of units. However, HUD will not provide assistance for unit months in excess of the number of unit months authorized for the PHA fiscal year.
- ACC reserves generated from pre-2003 appropriations may be used to support over-leasing during the attrition period, but will not be restored.
- ACC reserves will be restored to the one month level annually, subject to the availability of appropriated funds. Reserves will not be restored to the extent that their reduction was due to PHA over-leasing.

Pursuant to the FFY 2003 Appropriations Act, the following new policies supersede those enunciated in PIH Notice
2002-06:

- PHAs will be allocated renewal funding for all leased units, up to the authorized level, rather than all authorized units. If needed, subsequent funding will be allocated for additional units leased, up to the authorized level.
- PHAs are not authorized to engage in maximized leasing.

13. **MODERATE REHABILITATION PROGRAM** - The changes implemented

by this Notice do not apply to the Section 8 Moderate Rehabilitation Program. When an owner requests and is eligible to renew the funding for expiring Moderate Rehabilitation units, all units will be renewed following existing guidelines. When an owner opts not to renew funding, or is not eligible to renew funding, the PHA will receive a replacement Voucher for each unit not renewed. Funding for the replacement Vouchers may be limited to the number occupied at the time of HAP expiration. Thereafter, the Vouchers will be part of the agency's baseline and renewal funding will be provided according to the provisions of this Notice.

14. **MOVING TO WORK PROGRAM** – The renewal provisions of the Act cover those agencies participating in the Moving to Work demonstration program. Contract units will be renewed for Moving to Work agencies on the basis of voucher funds committed for specific purposes authorized in their Agreements. A separate Notice will be issued concerning the procedures for Moving to Work programs.

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 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/ _____

Michael Liu
Assistant Secretary for
Public and Indian Housing

Attachments-Three