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

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

Notice PIH 2004-7 (HA)

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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; Notice PIH 2003-23 Implementation of FFY 2003 Omnibus Appropriations Act Provisions for the Housing Choice Voucher Program.

Subject: Implementation of FFY 2004 Consolidated 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) 2004 Consolidated Appropriations Act (Public Law 108-199), which was signed into law on January 30, 2004. In this law, Congress modifies the method of calculating renewal funds, appropriates funds for Housing Assistance Payments (HAP), public housing agency (PHA) administrative expenses, and a central fund, and prohibits the use of FFY 2004 funds for over-leasing.

The requirements of the FFY 2004 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.** In FFY 2003, Congress enacted changes in the Housing Choice Voucher Program in order to fund each PHA's Housing Choice Voucher Program at a level that more closely reflected actual funding needs. For FFY 2004, additional changes have been enacted to better control the increasing costs of vouchers.

3. **Renewal Funding for HAP Costs.** Renewal calculations will be based on the unit months under lease -- up to a PHA's authorized baseline -- as reported to HUD as of August 2003. Renewal units will be funded on a per unit cost as reported to HUD as of August 2003 and adjusted for inflation for 2004.

The Appropriation Act allows for adjustment of the August 2003 per unit cost by "applying an inflation factor based on local or regional factors to the actual per unit cost." The inflation factor has been determined as the Annual Adjustment Factor (AAF). However, adjustments to the published AAF may be warranted in some cases. A PHA may present a case to HUD that clearly and objectively demonstrates the need for an increased inflation factor. That case must include all relevant documentation related to market factors and analysis related to modest housing cost for the area. More specific guidance will be published at a later time.

A request to HUD for a higher inflation factor must be submitted to HUD by July 15, 2004. Approval of the request is subject to the availability of appropriations.

HUD has already been collecting monthly leasing and cost data from each PHA on form HUD-52681B, FFY 2003 Data Collection – Housing Choice Voucher Program. If a PHA has not submitted that data, HUD will base renewal funding calculations on the most recent year-end settlement prior to August 2003.

As part of each calculation of renewal funding, HUD will examine the total unit months funded for each PHA during its current fiscal year. If the unit months funded 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 2004 Appropriations Act does not permit use of FFY 2004 funds to support over-leasing.

4. **Funding for Administrative Costs.** In FFY 2004, $1.19 billion in administrative fees will be allocated to PHAs on a pro rata basis, according to the amount they were eligible to receive in FFY 2003 without regard to the reduction required in that year due to excess administrative fee reserve balances. No administrative fees will be provided for over-leased units.

The FFY 2004 Appropriations Act stipulates that administrative fees provided from this appropriation shall only be used for activities related to the provision of Section 8 rental assistance, including related development activities. **Any administrative fees from FFY 2004 funding that are subsequently moved into the administrative fee reserve account at year end may not be used for "other housing purposes permitted by state and local law" [24 CFR 982.155(b)(1)], and must only be used for the provision of Section 8 rental assistance, including related development activity.**

5. **Central Fund.** The FFY 2004 Appropriations Act authorizes a central fund, to be maintained by the Department. The central fund will only be used to fund contract amendments to support voucher units leased that are authorized in a PHA's reserved baseline but that were not included in the renewal calculation. In FFY 2004, the central fund is not available to support increases in per unit costs.

As part of the renewal calculation HUD will identify from the latest data submission used in the renewal calculation, additional leasing that has occurred subsequent to the August, 2003 reporting cycle. HUD will provide funding for the additional leasing from the central fund at the time of the renewal. This transaction relates to internal processing and will be seamless to the PHA. Please refer to Section #3 above for the per unit cost used to fund additional leasing.

If a PHA has additional leasing up to the authorized level in the intervening months between quarterly data collection cycles, the PHA qualifies to request funding from the central fund if executed HAP contracts within baseline obligate all Annual Budget Authority (ABA) (minus any ABA provided for administrative fees), and the PHA has expended fifty percent (50%) of its available Annual Contributions Contract (ACC) reserve balance. The available ACC reserve balance for this purpose is defined as the reserve balance as of the close of the most recently completed PHA fiscal year.

To request funds from the central fund, a PHA must submit a written request for funding and a completed form HUD-52681B to the Section 8 Financial Management Center. The form HUD-52681B must include every unreported month that has ended at the time the request is submitted.

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 per-unit-cost for the difference between the current units leased and the units funded, for the funding cycle. Separate funding will be provided as needed for administrative fees.

Funding from the central fund will be based only on actual units leased by a PHA. 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 fifty percent (50%) of its available ACC reserve.

NOTE: Any requests for funds from the central fund must be submitted prior to the end of the calendar year, December 31, 2004.

6. **<u>PHA Actions to Reduce Costs</u>.** If the PHA is concerned about increases in its per unit costs (PUC), the PHA is advised to consider the following administrative steps:

A. <u>Reduce the payment standard amounts for the program</u>. This action has the most direct impact on controlling the PUC of the PHA program. Any decrease in the payment standard amount is immediately applicable to any applicant voucher family that is searching for a unit (not yet under HAP contract), and any participant family that is moving (the new reduced payment standard amount is used to determine the family's HAP at the new unit). The reduced payment standard amount is also immediately applicable for a participant family that is not moving from their current unit at any time that a new HAP contract must be executed for the unit, such as when the owner offers and the family accepts a new lease agreement.

B. <u>Review the rent to owner to determine if the rents are reasonable</u>. During the HAP contract term, the rent to owner at no time may exceed the reasonable rent for the contact unit as most recently determined or redetermined by the PHA. The regulations at 24 CFR 982.507(a)(3) provide that the PHA may redetermine the reasonable rent of units under contract <u>at any time</u>. In cases where there are increases in PUC, the PHA may want to immediately revisit whether the rent to owner for units on the program are currently reasonable when compared to compared unassisted units. Any reduction in gross rent that is below the payment standard will reduce the PUC.

The PHA may also request information at any time from the owner to ensure that the rent to owner does not exceed rents charged by the owner for comparable unassisted units in the premises. The owner must give the PHA any information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

The PHA may also wish to review previously approved rents increases to ensure that the resulting rent was not only reasonable in comparison to comparable unassisted units, but also complied with any rent control limits under State and local law that are applicable to the rent increase (see 24 CFR 982.509).

If the rent to owner is not reasonable as most recently redetermined by the PHA, the owner must reduce the rent to owner to the reasonable amount or the HAP contract must be terminated.

C. <u>Increase income matching/verification efforts and other anti-fraud activities.</u> While the PHA should already be taking appropriate steps to ensure that families are reporting all income, the PHA may want to redouble its efforts on income matching and verification efforts, including computer matching agreements between the PHA and the State Wage Information Collection Agency (SWICA).

D. Review the PHA policy on when family reports change in income or composition and when the PHA conducts interim reexamination, and revise as appropriate. The program regulations at 24 CFR 982.516(b) provide that at any time, the PHA may conduct an interim reexamination of family income and composition. The regulations at 24 CFR 982.516(c) provide that the PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition. Some PHAs do not require the family to report increases in income (or increases that do not meet a certain threshold) until the regular reexamination and does not make an adjustment until the effective date of the regular reexamination. PHAs with such policies may want to consider revising such policies to require families to report increases in income immediately, and to take increases in income into account for subsidy calculation purposes through an interim reexamination. The PHA would need to promptly notify the participants of the change in policy.

E. Impose or raise the minimum rent for the voucher program. In accordance with 24 CFR 5.630, the PHA may impose a minimum rent to be paid by the family in the voucher program of up to $50.

F. Review the PHA subsidy standards used to determine the bedroom size on the family voucher. The program regulations at 24 CFR 982.402(a)(1) provide that the PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and composition (the family unit size). The family unit size (the number of bedrooms on the family voucher) as determined for a family under the PHA subsidy standards is used to determine the maximum rent subsidy for a family assisted in the voucher program. The payment standard for a family is the lower of the payment standard amount for the family unit size (the number of bedrooms on the family voucher), or the payment standard amount for the unit sized of the actual unit rented by the family.

The subsidy standards established by the PHA must provide for the number of bedrooms needed to house a family without overcrowding, and must be consistent with space requirements under the housing quality standards. The PHA may want to review its subsidy standards to determine if the current PHA policy should be revised, keeping the above requirements in mind. A thorough review of the family composition of program participants against the subsidy standards established by the PHA may also be advisable to ensure that the family unit size is consistent with HUD requirements and PHA policy. If the family unit size changes during the HAP contract term, the new family unit size must be used to determine the payment standard amount beginning at the family's first regular reexamination following the change in family unit size (see CFR 982.505(c)(5)).

7. **Maximized Leasing/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. Maximized leasing is defined as PHAs using excess annual budget authority to fund additional unit months.

The FFY 2004 Appropriation (as did the FFY 2003 Appropriation) does not permit PHAs to over-lease or continue the practice of maximized leasing. No funds appropriated in FFY 2003 or FFY 2004 may be used by any PHA to lease more unit months than are authorized for that PHA.

If a PHA engages in over-leasing and/or maximized leasing, it must identify available ACC reserves in its account from pre-FFY 2003 appropriations, administrative fee reserves, or other sources to pay for the over-leasing/maximized leasing, or the PHA must take immediate steps to eliminate any current over-leasing/maximized leasing. 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 and FFY 2004 funds on the year-end settlement. HUD has no authority to provide funds to support unit months leased in excess of the PHA's baseline, and will not do so. The FFY 2004 Appropriation Act provides very direct language concerning the use of funds. HUD is directed to ensure prudent management and is authorized to take administrative actions, including sanctions, against PHAs that over-lease in a manner that displays a negligent or intentional disregard for the leasing limitations set by Congress. HUD has determined to date that these sanctions may include, but are not limited to a reduction of administrative fees paid, placing restrictions on the administrative fee reserves, and the declaration that the PHA is troubled.

8. **Administrative Fee Reserve Account.** PHAs should continue to be aware of the policy on unauthorized transfers of the administrative fee reserve. This restriction applies to reserves emanating from FFY 2003 and prior years. Please refer to Section #4 above for restrictions on the use of FFY 2004 administrative fees.

"The transfer of amounts from the Operating (Administrative Fee) Reserve to another non-Section 8 program account does not constitute use of the Operating Reserve for other housing purposes, even if the account to which funds would be transferred is designated for housing purposes. Operating Reserve funds must be expended to be considered used for other housing purposes."

The regulations at CFR section 982.155 b(3) states:

"If the PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses."

9. **ACC Reserve Account.** The ACC reserve now must cover only those HAP costs that exceed Annual Budget Authority available for HAPs in the current PHA fiscal year. The maximum 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 FFYs 2003 and 2004 appropriated funds may be used to cover HAP costs for authorized units, which exceed the Annual Budget Authority. The ACC reserves from FFYs 2003 and 2004 funds may not be used to assist any units above the baseline.

10. **Administrative Fees Recapture.** The FFY 2004 Appropriations contains no recapture provision for administrative fees.

11. **PHA Requirements.**

A. PHAs must continue to submit required financial documents. HUD will use PHA reporting 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 the funding levels provided and availability of ACC reserves, and will reduce payments if they are not in alignment with the availability of funds. 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. HUD will not provide funds for unit months leased in excess of the number of unit months available for authorized baseline vouchers for the PHA fiscal year.

C. PHAs must electronically submit form HUD-52681B when due. Submittals are due for every month, according to a schedule HUD will periodically provide. The Department will use the latest data provided by each HA in these submittals to calculate unit months leased for the PHA FY, which affects the PHA's renewal funding every quarter. If a PHA does not submit data for each month when due, HUD will use, as needed, the latest data that was submitted. If a PHA has not submitted data for the months of May through July 2003, which was due in August 2003, HUD will determine the PHA's per-unit renewal funding amount on the basis of the latest year-end settlement as of August 2003.

D. PHAs must manage their programs in a prudent manner, to enable them to serve families within their baseline. PHAs should review their policies and operations, to ensure they are not incurring HAP costs beyond what is needed to support decent housing within market rents for participants.

E. PHAs should review their leasing on a regular basis to determine when to submit a request for funding from the central fund, to cover additional units leased within the baseline.

12. **Regulations and Notices Superseded.** The FFY 2004 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 necessarily 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 actual costs reported by the PHA, on form HUD-52681B, as of August 2003. If that report was not submitted, per unit HAP costs will be based on the most recent HUD-approved settlement prior to that date.

Renewal policy before enactment of the FFY 2003 Appropriations Act was provided in PIH Notice 2002-06, which expired on March 31, 2003. Renewal policy under the FFY 2003 Appropriations Act was provided in PIH Notice 2003-23. Those provisions that are not superseded by the FFY 2004 Appropriations or otherwise inconsistent with the terms of this Notice are re-established in this Notice and include:

- The maximum 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.
- ACC reserves generated from pre-FFY 2003 appropriations may be used to support over-leasing during the attrition period, but will not be restored.

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.

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).

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for Public and Indian