

PIH Notice 2011-48 Frequently Asked Questions (VERSION 4) Implementation Guidance

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A. Overview

- Who? All PHAs.
- What? [PIH Notice 2011-48](#) initiated two *separate* requirements:
 - *First*, PHAs report their five highest compensated employees on [Form HUD-52725](#).
 - *Second*, PHAs take steps to set reasonable compensation for executive directors by explicitly considering comparability in making significant compensation decisions.
- When?
 - *The High Five*: PHAs submit Form HUD-52725 no later than October 31, 2011 to their local field office.
 - *Comparability Analysis*: PHA Boards conduct a comparability analysis when there is a significant change, which the PHA Board, in its discretion, may define.
- How?
 - *The High Five*: PHAs report the five highest compensated individuals who are PHA employees and whose compensation is, at least in part, charged to HUD funding (including defederalized funding).
 - Amounts from W-2, box 1 and 1099-MISC, box 7 → Column C.
 - PHA-made payments → Column D.
 - Employee-made payments and non-cash benefits → Column E.
 - *Comparability Analysis*: PHA Boards have discretion to determine how they will conduct their own comparability analysis policy.

B. The Five Highest Compensated Employees

1. Form HUD-52725

Q1: Where can I find the latest version of Form HUD-52725?

A: Click this: [Form HUD-52725](#). It will open as a zip file.

Q2: Where do I report an employee's base salary? What if it does not accurately reflect the ordinary base salary?

A: Rather than a base salary, report actual amounts from CY 2010. In Column C, report the amounts from the employee's IRS Form W-2, box 1, and 1099-MISC, box 7.

Do not make adjustments to reflect special circumstances; report actual amounts.

Q3: Where do I report amounts paid by the PHA, but not included in either W-2, box 1 or 1099-MISC, box 7?

A: PHA-made payments not reported in Column C, such as amounts paid to an employee's health insurance provider, retirement plan, the Social Security Trust fund, Medicare, or other such payments, are reported in Column D.

Q4: Where do I report amounts paid by the employee, but not included in either W-2, box 1 or 1099-MISC, box 7?

A: Employee-made payments not reported in Column C, such as such as health care premiums, IRA contributions, or other such payments, are reported in Column E.

Q5: Where do I report non-cash fringe benefits?

A: Non-cash compensation is reported in Column E.

Q6: When I open Form HUD-52725 it is password protected. What is the password?

A: No password is needed. Pre-2003 versions of Excel appear to be having compatibility issues with the form.

Open the [zipped file](#) from the Calendar Year 2012 Subsidy Processing web site. Click on extract and save the file to the desktop as a copy. Then open the file from the desktop.

First, complete box 2. If the PHA name in box one is entered first, Excel may generate an error message. After completing box 2—by using the dropdown box for the PHA code—the form auto enters the PHA's name in box 1.

Continue to complete and certify the form, using Save As to save the file with a new name. Enter only whole dollar amounts. Do not include cents. Be sure CAPS LOCK and SCROLL LOCK are off.

Q7: When I open Form HUD-52725 it is read-only. How can I enter data?

A: Pre-2003 versions of Excel appear to be having compatibility issues with the form. Follow the steps in Q5. If that does not work, send an email to PIH2011ExecComp@hud.gov.

Q8: When I type positive amounts into Form HUD-52725 it says the amount is negative. What should I do?

A: Only type in whole dollar amounts rather than cents.

2. “PHA Employees”

Q1: Which employees are covered by PIH Notice 2011-48?

A: PHAs must report the five highest compensated individuals (1) who are PHA employees and (2) whose compensation is, at least in part, charged to HUD funding (including defederalized funding).

Q2: Who is a PHA employee?

A: A PHA employee is an individual who is (1) employed by the PHA, or (2) employed by a related organization and who performs PHA work. For example, if a city manager is also the PHA executive director and spends five percent of her time on PHA work, the city manager is a PHA employee.

Q3: If instead of employing a staff, a PHA contracts with another organization to provide its management, does it report anyone on Form HUD-52725?

A: It depends. If management is contracted out to an unrelated organization and the PHA itself does not have any employees, then that PHA does not have to report any employees on Form HUD-52725.

BUT, a PHA with no employees that does not qualify for the HCV-only exemption should still submit a Form HUD-52725 to its local field office. Type “No Employees” in cell A14, which is the first row of the “Last Name” column.

If management is contracted out to a related organization, such as a city to which the PHA belongs, then the PHA must report the five highest compensated employees on Form HUD-52725.

Q4: What is a “related organization”?

A: Related organization means any organization connected to a PHA through one of the following relationships:

- (1) Parent: controls the PHA (for example, the PHA is run as a division of a city);
- (2) Subsidiary: controlled by the PHA (for example, an instrumentality the PHA formed under state law, which it controls, to carry out one of its specific housing functions); or
- (3) Brother/Sister: controlled by the same organization that controls the PHA (for example, if a county runs the PHA and also a separate local housing agency, the two housing agencies are in a brother/sister relationship).

Q5: If an employee is one of the five highest-compensated PHA employees, but is in a non-executive type position, is he reported on Form HUD-52725?

A: Yes. The five highest-compensated employees are reported, whether or not they are “highly compensated” or “executives.”

If a PHA has five or fewer employees, then all employees are reported on Form HUD-52725.

Q6: If one of the five highest in CY 2010 is no longer employed by the PHA, is that person still reported?

A: Yes.

Q7: If an individual was not employed by the PHA for all of CY 2010, but his compensation put him as one of the five highest compensated employees, is he included on Form HUD-52725?

A: Yes.

3. Calculating Employee Compensation

Q1: Over what time period does a PHA report an employee's total compensation?

A: CY 2010.

Q2: When determining an employee's compensation, should I report only the portion coming from HUD funding, or the total amount of compensation regardless of source?

A: Report the total compensation paid to the individual by the PHA (and any related organization). When some funding comes from non-HUD funds (even defederalized funds), the PHA must report total compensation for the individual, even if only a portion of it is compensation for work on behalf of the PHA.

For example, if the city manager also has the duties of the PHA's executive director and her total compensation is \$60,000 a year, \$3,000 from the PH program and the remaining \$57,000K from local city funds, the PHA reports all \$60,000.

If a PHA would like to note that one or more of the individuals it reports receive compensation that is not solely from HUD funding, it may include a comment in the email in which the PHA submits its Form HUD-52725 to its local field office.

Q3: If a PHA employee oversees two separate PHAs and is paid only one salary, does each PHA report the total salary from both PHAs?

A: Yes, report the total compensation paid to the individual. This will result in some individuals being reported twice at their full salary amount. Before the information is posted, the data will be reviewed for duplicates and names will be removed.

Q4: When determining which employees are the five highest compensated, are only wages considered or total compensation?

A: PHAs determine the five employees who have the highest amount of combined compensation, as reflected in the total from Form HUD-52725's Column F.

Q5: If an employee receives a non-cash benefit, is it reportable? Where is it reported? How is fair market value determined?

A: A PHA should discuss with its appropriate staff (such as whoever does its accounting) whether a specific benefit is compensation to an employee.

A non-cash (or “fringe”) benefit that is solely for business purposes, such as a work laptop, is not compensation to an employee.

A non-cash benefit that is not solely for a business purpose is generally compensation *with a value equal to the fair market value* of the personal use to the employee. For example, if a PHA vehicle, primarily used on PHA business, may also be driven to and from work by an employee, it has a mixed (business and personal) use, and the value of being able to drive the vehicle to and from work is considered compensation. Such benefits are usually reported in box 1 of an employee’s W-2, and thus reported as part of the amount in Column C.

However, if a non-cash benefit to an employee is compensation, but is not reported in the W-2’s box 1 (an uncommon event), then it should be reported in Column E.

Fair market value is not the cost to the PHA. Rather, fair market value “is that amount a hypothetical person would have to pay a hypothetical third party to obtain (i.e., purchase or lease) the particular fringe benefit.”

Q6: What is meant by the Social Security Trust Fund?

A: The Social Security Trust may also be referred to as OASDI, FICA, MC, or other names. Include amounts paid by the PHA in Column D.

Q7: How should amounts paid by a PHA into a retirement system be reported?

A: It depends. If the amount paid is an amount specific to the employee and the employee has a right to that amount regardless of any event occurring, then report that amount in Column D.

If the amount paid by the PHA into a retirement system is a single bulk payment for all employees, rather than specific amounts for individual employees, do not include these payments.

Additionally, if the contributions are contingent upon the employee later qualifying, such as being vested in the plan or becoming eligible for retirement benefits, do not report such amounts as compensation.

Q8: If a PHA employed an individual for only part of the year, does the PHA report the actual compensation received for the part-year or what the salary would have been for the full year?

A: Report the actual compensation, such as the amount from the individual’s CY 2010 IRS Form W-2, box 1 plus IRS Form 1099-MISC, box 7.

Q9: Should vacation days earned by an employee be reported as compensation?

A: No. Do not include vacation days unless those days have been converted into a payment, such as through being used by the employee or paid out at the end of service.

4. Submission of Form 52725

Q1: What is the due date for PHAs to submit Form HUD-52725? Where is the form sent?

A: PHAs are required to submit Form HUD-52725 no later than October 31, 2011 to their local field office. The local field offices were directed to inform each of their PHAs how and to whom Form HUD-52725 should be submitted.

Ideally, the form should be submitted in the Excel Tool format available at the [Calendar Year 2012 Subsidy Processing](#) web site by email to the PHA's field office POC. Form HUD-52725 is the last main bullet under "Excel Tools and Data Collection."

Q2: For HCV-only PHAs, what is the deadline and process for submitting Form HUD-52725?

A: The process is the same for all PHAs.

5. Housing Choice Voucher (HCV)-Only Exemption

Q1: If a PHA operates an HCV-only program and receives less than 50 percent of its funding for employees from HUD, are there any other requirements to qualify for the exemption? Is HUD approval of the exempt status required?

A: No. PHAs that operate an HCV-only program and receive less than 50 percent of their funding for employees from HUD are exempt from the requirement to file Form HUD-52725. HUD's pre-approval is not required. In the interest of public disclosure, however, your agency is encouraged to file.

Q2: If an HCV-only PHA is part of a larger organization (such as a city) and receives more than 50 percent of its funding for employees from HUD, but the larger organization as a whole does not, is the PHA exempt from the Notice's reporting requirement?

A: No. The focus is on the PHA rather than the larger organization. If an HCV-only PHA receives more than 50 percent of its funding for its PHA employees from HUD, then it does not qualify for the Notice's exemption.

Q3: If an employee of an HCV-only PHA has less than half of his compensation paid for with HUD-funding, is that individual exempt?

A: No. The exemption applies at the PHA level, not the individual level.

C. Comparability Analysis

Q1: Must a PHA conduct the comparability analysis on all of the five highest compensated employees?

A: No. The comparability analysis requirement only applies to the executive director or equivalent position.

Q2: Is there a regulation defining reasonable compensation?

A: No. HUD statutes and regulations do not require PHAs to set any particular level of compensation. The Notice describes the responsibility of the PHA Board of Commissioners or equivalent authority to take steps to set reasonable compensation for executive directors or comparable executive employees. It instructs that the decision-making body should explicitly consider comparability in making significant executive director compensation decisions. The Notice also explains that this can be accomplished in a variety of ways as determined by the PHA, such as conducting a comparability study.

By executing the PHA Certification of Compliance with PHA Plans and Related Regulations to accompany the PHA 5-year and annual PHA Plan, the Chairperson of the Board of Commissioners or other authorized PHA official is certifying that the PHA has complied with all applicable Federal statutory and regulatory and related requirements.

One such requirement is to comply with OMB Circular No. A-87's cost principles. Attachment B, part 8(a) of Circular No. A-87 requires that compensation for personal services be reasonable. Part 8(b) explains that one way of determining that compensation is reasonable is to look at the amount paid for comparable work in the market.

Q3: For what positions must documentation be retained to demonstrate that the comparability analysis has been conducted?

A: The comparability certification is only required when setting or negotiating the salary and benefits for an executive director, or comparable position. Other than for such a position, the annual top five wage and benefit earners do not need a comparability review as a part of submitting Form HUD-52725.

Q4: Does considering comparable compensation from a published annual salary survey for executive directors satisfy the supporting documentation requirement?

A: HUD does not specifically endorse any industry product or resource. Such data, however, may be a great reference resource for conducting comparability analyses.

Q5: How does a PHA certify that it completed the comparability analysis?

A: When the PHA leadership executes the PHA's Certification of Compliance with the PHA Plans, the PHA has certified that comparability analysis requirements have been met. No additional documentation should be submitted. However, the PHA should retain supporting documents in-house and provide them to HUD upon HUD's request.

Q6: How frequently must the comparability analysis be performed? What does "significant change" mean?

A: The PHA Board of Commissioners or equivalent authority has discretion to determine how it will conduct its comparability analysis policy, and this discretion extends to the Board's definition of "significant changes to compensation."

Q7: The Notice references to PIH Handbook 7401.7(1987). Are PHAs required to follow this handbook for setting executive compensation?

A: No. Although illustrative of prior HUD guidance, PIH Handbook 7401.7 has been cancelled and is no longer available on HUDCLIPS.

D. Statutory Authority

Q1: What is the legal authority for issuing Notice 2011-48?

A: "The collection is authorized pursuant to HUD's specific oversight of the public housing operating fund . . . , particularly 42 U.S.C. 1437c(a)(1) and (f) and 42 U.S.C. 1437f(b)(1). Authority is also found in the Department of Housing and Urban Development Act . . . Under the Department of HUD Act, HUD is provided general

oversight and monetary authority over its funded programs. In particular, section 7(r)(1) of the Department of HUD Act (42 USC 3535(r)(1)) authorizes the Secretary to expend funds “for evaluating and monitoring” housing programs, including public housing and all other programs authorized under the U.S. Housing Act of 1937 and other HUD statutes, and for “collecting and maintaining data for such purposes.”

Q2: What is the legal authority for imposing monetary sanctions for non-compliance?

A: HUD has statutory and contractual authority to request PHA records, and to apply monetary sanctions against a PHA for failing to comply. Embedded in the Annual Contributions Contract is a condition that a PHA provide its records to HUD at such time and in such form as HUD requires.

Under the U.S. Housing Act of 1937, Section 6(j)(4), “if the Secretary finds that a public housing agency receiving [capital and operating funds] has failed to comply substantially with any provision of this chapter relating to the public housing program, the Secretary may,” among other things, “withhold from the agency amounts from the total allocations for the agency . . .” One requirement within that chapter—Chapter 8 of Title 42—is that HUD both have access to such records and that such right be included in the ACC.

The ACC also reiterates that HUD retains its rights and remedies under law.