



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

Special Attention:

Public Housing Agencies (PHA)
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

NOTICE PIH-2016-14 (HA)

Issued: October 3, 2016

This notice remains in effect until
amended, superseded, or rescinded

Subject: Guidance on the Public Housing Agency (PHA) salary restriction in HUD's annual appropriations.

1. Purpose

This notice provides guidance to Public Housing Agencies (PHAs) regarding the provision in HUD's annual appropriations that limits the use of Section 8 Tenant-Based Rental Assistance and Section 9 Public Housing Assistance funds to pay salaries (including any bonuses) to PHA employees, including chief executive officers, other officials, and any other employees.

2. Applicability

This notice applies to all PHAs, including Public Housing-only, Section 8-only, and Moving to Work (MTW) PHAs, that:

- (1) receive appropriations during their fiscal year (FY) for one or more of the following programs: Section 8 (Housing Choice Vouchers (HCV)), Section 9 Capital Fund, and Section 9 Operating Fund; and
- (2) pay any annual salary (including any bonus) to a covered individual (as defined in Paragraph 4, Section B) during the PHA's FY that exceeds the annual rate of basic pay for a position at level IV of the Executive Schedule at any time during that FY.

3. Background

The limitation on the amount of Section 8 HCV and Section 9 funds that can be used for PHA salaries was first implemented in Federal Fiscal Year (FFY) 2012 in HUD's appropriations and has been included in all subsequent appropriations acts. For FFY 2012 and FFY 2013, the limitation applied to salaries only.¹

¹ FFY 2012 Section 234 of Pub. L. No. 112-55, 125 Stat. 702, November 18, 2011, Federal Fiscal Year (FFY) 2012 Appropriations Act (P.L.112-55). *Also see* FFY 2013 Section 1101 of Pub. L. No. 113-6, 127 Stat. 412, March 26, 2013, Federal Fiscal Year (FFY) 2013 Appropriations Act (P.L.113-6).

In HUD's FFY 2014 annual appropriations, Congress expanded the limitation to include not only funds made available in the applicable appropriations, but also to funds made available in "any other Act."² In HUD's FFY 2015 annual appropriations, Congress further expanded the limitation to include not just salaries, but also bonuses paid.³

At the time of publication of this notice, the most recent annual appropriations retain the same inclusions as the FFY 2015 appropriations; Title II, Division L, Section 226 of HUD's FFY 2016 annual appropriations reads:

None of the funds made available by this Act, or any other Act, for purposes authorized under section 8 (only with respect to the tenant-based rental assistance program) and section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), may be used by any public housing agency for any amount of salary, including bonuses, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule at any time during any public housing agency fiscal year 2016.⁴

4. Implementation

To fulfill its obligations under HUD's annual appropriations, each PHA must compute the amount of impacted salary and bonus for each covered individual during the PHA's FY. At the close of the FY, for each covered individual whose salary and bonus exceeds the annual rate of basic pay for a position at level IV of the Executive Schedule, the PHA must ensure that the amount in excess is not paid from Section 8 or Section 9 funds. This computation will depend on a number of factors that vary by PHA and covered individual, including the beginning and end dates of the PHA's fiscal year and the amount of the covered individual's salary and bonus.

A. Applicable funds:

None of the funds originating from Section 8 (HCV) or Section 9 sources under the applicable appropriations act, as well as any other act, may be used to pay the salary (including any bonus) of a "covered individual" at a rate in excess of the applicable salary limitation at the close of the PHA's FY. This includes fees that PHAs which have implemented asset management may collect from property-level funding that may be attributable to Section 8 (HCV) or Section 9 funding. It is the effect of Congress' mandate that any fees a PHA collects that originate from funding for Section 8 (HCV) or Section 9 remain subject to this limitation and count toward the amounts limited by Congress during the PHA's FY.

² FFY 2014 Section 231 of Pub. L. No. 113-76, 128 Stat. 634, January 17, 2014, FFY 2014 Appropriations Act (P.L.113-76)

³ FFY 2015 Section 227 of Pub. L. No. 113-235, 128 Stat. 2756, December 16, 2014, FFY 2015 Appropriations Act (P.L.113-235)

⁴ FFY 2016 Section 226 of Pub. L. No. 114-113, 129 Stat. 2895, December 18, 2015, FFY 2016 Appropriations Act (P.L.114-113)

All eligibility restrictions for Section 8, Section 9, and other funds continue to apply. Section 8 HCV Housing Assistance Payments (HAP) funds may never be used for administrative expenses such as PHA employee salaries or bonuses. This applies to HAP renewals, new vouchers, and HAP funds in the PHA's net restricted asset (NRA) account.

B. Covered Individuals:

The term "covered individuals" includes the "chief executive officer" as well as "any other official or employee" of the PHA with an annual salary (including any bonus) greater than the then prevailing salary for level IV of the Executive Schedule.

The term "covered individuals" includes persons who are employed in a legally separate entity of the PHA but are reported in the PHA's financial statement as a component unit in accordance with applicable accounting standards.

The term "covered individuals" does not include persons who work on an hourly basis, as needed, and are paid an hourly rate.

The term "chief executive officer" includes the chief operating officer, the executive director, or other similarly titled individuals.

For PHAs that are divisions or departments of another entity such as a state, county, locality, or non-profit that administers the federal Section 8 HCV or 9 programs and receives federal funds under Section 8 or 9, the term "chief executive officer" includes similarly titled individuals at the PHA who are employees of that other entity.

The phrase "any other official or employee" includes all officials or employees of the PHA within the ordinary understanding of those terms.

The term "covered individuals" does not include independent contractors. PHAs must determine on a case-by-case basis whether or not an individual providing services under a contract or other agreement is a covered individual. The determination of whether such an individual is an independent contractor or an employee depends on the relationship between the PHA and the individual, not on the name on the contract or agreement. Guidance for making this determination is provided by the Internal Revenue Service at www.irs.gov.

C. Annual salary (including any bonuses):

Under this notice, and as provided by Congress beginning in FFY 2015, salaries (including bonuses) are subject to the restriction. Overtime and benefits (such as retirement, life insurance, medical insurance, or the use of a PHA vehicle) are not.

The term "salary" includes payments to all covered individuals who are paid on an annual basis. It also includes, for example, situations where multiple PHAs collectively hire one person for an annual amount under a single agreement.

The term “bonus” refers to additional taxable compensation that a covered individual receives during the PHA’s FY that is generally a one-time payment based on performance or meeting performance measures but not necessarily limited to this standard. If a reasonable person can conclude that certain additional taxable compensation (beyond salary) appears to be a bonus, it should be treated as a bonus and falls under the restrictions of the appropriation acts.

Further, for purposes of this notice, salaries (including any bonuses) are the amounts the PHA pays to an individual during the PHA’s fiscal year.

D. Timeframe:

Because PHAs operate on different fiscal year schedules, each PHA must calculate the impacted payments individually.

5. Monitoring and Audits

HUD expects each PHA to comply fully with the salary and bonus limitation provisions discussed above. In accordance with the OMB Compliance Supplement, HUD expects that PHA auditors will perform compliance testing for this provision.

PHAs should calculate excess salary and bonuses reasonably and should document the calculation so that, upon an audit, the PHA can explain how each covered individual’s salary and bonus exceeding level IV of the Executive Schedule for that fiscal year were funded and prove to the auditor that there was no improper use of the applicable FFY Section 8 or Section 9 monies to fund excess PHA FY salary and bonus payments.

6. Questions

For further information about this notice, PHAs may contact the Technical Assistance Center (TAC) at 1-888-245-4860. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

Lourdes Castro Ramírez
Principal Deputy Assistant Secretary for
Public and Indian Housing