



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

Special Attention of:

Directors of HUD Regional and Field
Offices of Public Housing; PIH Program Center
Coordinators; Public Housing Agencies
Administering Housing Choice Voucher Programs

Notice PIH 2012 – 42 (HA)

Issued: October 25, 2012

Expires: This Notice remains effective until amended, superseded, or rescinded

CORRECTION

Cross References:

HUD Notice PIH 2011-65
HUD Notice 2011-3
HUD Notice PIH 2008-43
HUD Notice PIH 2007-5
HUD Notice PIH 2004-12

Subject: Housing Choice Voucher Family Moves with Continued Assistance

- Purpose:** This notice revises Section 15.d. so that Public Housing Agencies (PHAs) are required to report an action code 10 (Issuance of Voucher) on the family report (Form HUD-50058) only before an action code 1 (New Admission) and an action code 4 (Portability Move-in). Notice PIH 2012-42 (HA), posted on October 2, 2012, provided that PHAs are required to enter an action code 10 (Issuance of Voucher) before the submission of an action code 1 (New Admission), action code 2 (Annual Reexamination) when line 12b or 21c = y indicating that the family is moving into a new unit, action code 3 (Interim Reexamination) where line 12b or 21c = y, action code 4 (Portability Move-in) and action code 7 (Change of Unit). The revision to Section 15.d. of this notice is consistent with the Department's latest guidance on reporting of action code 10 (Issuance of Voucher) detailed in PIH Notice 2011-65 (HA). This notice continues to provide guidance on public housing agency (PHA) administrative responsibilities related to family moves with continued assistance both within a PHA's jurisdiction and portability moves and restates Notice PIH 2011-3, which has expired.
- Background:** One of the key features of the Housing Choice Voucher (HCV) program is the mobility of the assistance. The regulations at 24 CFR 982.353 provide that housing choice voucher participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. Moves with continued assistance can occur both inside and outside of the initial PHA's jurisdiction. The term "portability" refers

to the process of leasing¹ a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issues the family its voucher (the initial PHA). Program regulations covering where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family moves) are found at 24 CFR 982.353 through 982.355.

When a family moves under portability, the receiving PHA may choose to absorb the family into the receiving PHA's program or bill the initial PHA. The program regulations at 24 CFR 982.355(e) provide that the receiving PHA may bill the initial PHA for housing assistance payments (HAP) and administrative fees to fund the assistance for a portable family. The regulations require that the initial PHA must promptly reimburse the receiving PHA for the full amount of the HAP payments and with 80 percent of the on-going administrative fee (or a negotiated amount if both PHAs agree) for each month that the family receives assistance from the receiving PHA. For Calendar Year 2012, administrative fees for portable vouchers are based on 80 percent of the Column B posted rate for the PHA that is being billed. PHAs apply the pro-ration factor determined by HUD to the 80 percent of the Column B posted rate. The posted administrative fees are found at www.hud.gov/offices/pih/programs/hcv. These pro-rated fee amounts may be used for the entire calendar year to avoid the need for PHAs to re-calculate their portable fees each quarter. Information on administrative fees for portability billing purposes for subsequent calendar years will be provided in the annual HUD guidance on administrative fees.

The regulations further provide that the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial PHA and the receiving PHA must also comply with billing and payment deadlines under the financial procedures (see Section 10 below for a summary of portability billing deadlines). HUD may assess penalties against an initial PHA or a receiving PHA for violations, as determined by HUD, of the portability requirements.

HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA annual contributions contract (ACC) (see 24 CFR 982.355(f)(1)). HUD will continue to exercise this authority to transfer units and funds from the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the billing procedures described below.

3. **Equal Opportunity Requirements:** PHAs must administer its HCV program in compliance with all applicable fair housing and other civil rights requirements, including the authorities cited at 24 CFR 5.105(a). The PHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. See 24 CFR 982.53 for the equal opportunity requirements for the HCV program.

¹ The term portability also refers to cases where families participating in the voucher homeownership option purchase units outside of the initial PHA's jurisdiction. See §982.636.

Note on Reasonable Accommodation: Notwithstanding any other provision of this Notice, when a request to move is due to a disability of a family member, even if a family might otherwise be restricted from moving (*e.g.*, under a “one move per year” policy or because of insufficient funding), PHAs must consider requests for reasonable accommodations in accordance with HUD’s regulations at 24 CFR 100.204, 24 CFR 8.33, and 28 CFR 35.130, including reasonable accommodations relating to moves, that are necessary for a qualified individual with a disability to benefit from the program. In cases where the limitation on portability is a discretionary policy of the PHA, the PHA must grant the accommodation unless doing so would impose an undue financial and administrative burden. In cases where the limitation on portability is compelled by regulation, the PHA must first assess whether the requested accommodation would impose an undue financial and administrative burden. If the answer to this question is “no,” the PHA must forward the request to HUD so the relevant regulatory provision can be waived by the Assistant Secretary.

In cases where a PHA believes it has insufficient funding to allow a move under this notice and provided that all of the requirements set forth in section 13 of this notice are met, a PHA must nonetheless consider a request for a reasonable accommodation, but may, where the individual facts warrant, determine that allowing the move would pose an undue financial and administrative burden to the PHA. Such determination is subject to review by the local HUD office, as well as by the HUD Office of Fair Housing and Equal Opportunity in the event a complaint is filed alleging a failure to grant a reasonable accommodation.

4. **Portability-Initial PHA Responsibilities: Contacting the Receiving PHA:** When a family wishes to move under portability, the family must inform the initial PHA of the area to which the family wishes to move. If the family is not currently a program participant, the initial PHA must determine if the family is income eligible in the area to which the family wishes to move. If the family is not income eligible in the area to which the family wishes to move, the PHA must inform the applicant family they may not move to the area in question and receive voucher assistance. Income eligibility is not re-determined when a participant family (a family that is already under a HAP contract) exercises portability.

The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will bill or absorb the family’s voucher. HUD encourages PHAs to communicate this information via email in order to expedite the families’ requests. Based on the receiving PHA’s response, the initial PHA must determine whether they will approve or deny the portability request. Section 13 of this Notice outlines the reasons a PHA may deny a family’s request to move.

Once the portability request is approved, the initial PHA issues the family a voucher and must contact the receiving PHA on the family’s behalf. The initial PHA must promptly notify the receiving PHA to expect the incoming family (see section 24 CFR 982.355(c)(2)). This means the initial PHA contacts the receiving PHA on the family’s behalf, typically by telephone, fax, or email. Simply referring the family to HUD or to a website for information on the receiving PHA’s address does not fulfill the responsibilities of the initial PHA under the program regulations. The initial PHA must also advise the family how to contact and

request assistance from the receiving PHA (e.g., the name and telephone number of the staff person responsible for working with incoming portability families and any procedures related to appointments for voucher issuance the receiving PHA has shared with the initial PHA). The Form HUD-52665, Family Portability Information, contains a line that the initial PHA uses to identify the receiving PHA.

- 5. Portability-Initial PHA Responsibilities: Part I of the Form HUD-52665:** Once the family is approved to move using portability, the initial PHA completes Part I of the Form HUD-52665 and sends it to the receiving PHA, along with a copy of the family's voucher issued by the initial PHA, a current copy of Form HUD-50058, and copies of the income verification supporting the form. (Note that in the case of an applicant, the initial PHA has not completed the HUD-50058 and submitted the information to HUD because the family is not yet a new admission. However, the PHA must provide the family information and income information to the receiving PHA in a format similar to the Form HUD-50058 so that the information is easily available for use by the receiving PHA.)

Part I of the form provides the date by which the initial billing notice provided by the receiving PHA must be received by the initial PHA. The initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but no later than 60 days following the expiration date of the family voucher issued by the initial PHA (see Section 10 below for a summary of portability billing deadlines).

If the initial PHA has not received a billing notice by the deadline and determines that it will not accept a late billing, the initial PHA must inform the receiving PHA of this decision in writing. If the initial PHA informs the receiving PHA that it will not honor a late billing, the initial PHA is not required to honor any billing notice received after the billing deadline. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it simply returns the late Form HUD-52665 to the receiving PHA, and the receiving PHA must absorb the family.

In certain circumstances, HUD may require the initial PHA to accept the late billing (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to do so, which may include reducing the receiving PHA's administrative fee. Additionally, in cases where the initial PHA is required by HUD to accept a late billing, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible.

- 6. Portability-Receiving PHA Responsibilities: Processing Responsibilities:** The receiving PHA must respond by email or other confirmed delivery method to the initial PHA's inquiry to determine if the family's voucher will be billed or absorbed. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. If the receiving PHA notifies the initial PHA that they will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date. This prevents placing a financial hardship on

the initial PHA and putting a family that has already terminated the lease and vacated their assisted unit and moved to the new jurisdiction at risk of losing their assistance.

After receiving the form HUD-52665 and supporting documentation from the initial PHA, the receiving PHA must promptly issue a voucher to the family for its search in the receiving PHA jurisdiction, the term of which may not expire before the expiration date of the initial PHA voucher. HUD expects the receiving PHA to process the family's paperwork and issue the incoming family a voucher for its jurisdiction within two weeks of receiving the HUD-52665 and supporting documentation, provided the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures.

A receiving PHA should not process the family if the initial PHA voucher has already expired when the family arrives at the receiving PHA, but should refer the family back to the initial PHA. The initial PHA would have to decide to extend the term of the initial PHA voucher (and the billing deadline) before the receiving PHA would process the portability move in such an instance.

The receiving PHA does not re-determine income eligibility for a portable family that was already receiving voucher assistance and may not delay the family's housing search in issuing the voucher. Should the receiving PHA wish to conduct its own background checks and/or conduct a new income reexamination on a family that has already received housing assistance payments under the initial PHA, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until those processes are completed. However, the PHA may take subsequent action (e.g., recalculating the HAP payment based on updated income information; terminating the family's participation in the program due to criminal background or failing to disclose necessary information) against the family based on the results.

In the case of an applicant family, the receiving PHA may delay issuing a voucher or otherwise delay approval of a unit only if the re-certification is necessary to determine income eligibility. For example, if the applicant family initially reported they had no earned income but they subsequently obtain new employment, the receiving PHA may need to conduct a recertification of income to ensure the family is income eligible in the receiving PHA's jurisdiction.

The receiving PHA may always delay approval of the unit or issuance of the voucher if the family refuses to comply with the receiving PHA procedures. In any case where the receiving PHA is refusing to process or provide assistance under the portability procedures, the family must be given the opportunity for an informal review or hearing in accordance with 24 CFR 982.554 or 982.555.

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA voucher, either when it initially issues its own voucher or by subsequently extending its own voucher's term. However, if the receiving PHA provides the family with search time beyond the expiration date of the initial PHA's voucher, it must inform the initial PHA of the extension and should bear in mind the billing deadline that is

based on the expiration date of the voucher issued by the initial PHA (please see sections 7 and 10 below for billing deadline information). Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a Request for Tenancy Approval, execute a HAP contract, and cover the anticipated delivery time (if the PHA is not submitting the billing information by fax or email) so that it will be received by the initial PHA by the deadline date.

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA, but instead wishes to return to the initial PHA or wishes to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extensions of search time provided by the receiving PHA voucher are only valid for the family's search in the receiving PHA jurisdiction. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA. With respect to extensions of time, both receiving and initial PHAs should consider that individuals with disabilities and families that include a member with a disability may require additional time to locate a suitable unit.

The receiving PHA may absorb the family into its own program once the HAP contract is executed on behalf of the family by the receiving PHA, assuming it has funding available under its ACC to do so and such a decision will not result in over-leasing for the Calendar Year. The receiving PHA may also absorb a portable family assisted through a billing arrangement by terminating the billing arrangement with the initial PHA. In such a case, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family.

Although a receiving PHA notifies the initial PHA of its intent to absorb an incoming family early in the portability process, a PHA does not technically "absorb" a family into its program until the receiving PHA executes a HAP contract on behalf of the family in the receiving PHA jurisdiction. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under HAP contract in the receiving PHA jurisdiction, the receiving PHA cannot absorb the family.

7. **Portability-Receiving PHA Responsibilities: Part II of Form HUD-52665:** The receiving PHA sends Part II of Form HUD-52665 to the initial PHA. If the receiving PHA will bill the initial PHA, the receiving PHA not only completes Part II of the Form HUD-52665, but also attaches a copy of the new Form HUD-50058 before returning it to the initial PHA. The receiving PHA must complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family but with sufficient time so that it is received by the initial PHA no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

The initial PHA is generally not obligated to honor initial billings that are not completed and mailed by the receiving PHA within 10 working days after the date the HAP contract is executed (or received within 60 days after the initial voucher expires). Note that as it pertains to the billing deadline, it is the date the HAP contract is executed which is at issue, not the effective date of the HAP contract. For instance, if a PHA executes a HAP contract within 60 days of the approval of the unit, the HAP contract may be retroactive to the date the unit was approved. It is the date the PHA executed the contract, not the retroactive effective date of the contract that establishes the deadline by which the initial billing must be mailed, emailed or faxed. The initial PHA must immediately inform the receiving PHA in writing of its decision not to accept the late billing submission. **A receiving PHA that failed to send the initial billing within the billing deadline is generally required to absorb the family into its own program unless the initial PHA is willing to accept the late submission.**

HUD may in certain instances require the initial PHA to honor a billing submission that is received after the billing deadline (such as where the receiving PHA is over-leased and is in danger of not being able to stay under unit months available for the Calendar Year). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee and subsequently transferring units and funds from the receiving PHA to the initial PHA.

- 8. Portability-Timing of the Initial and Subsequent Billing Payments:** The initial PHA must pay the first billing amount due within 30 calendar days of receipt of Part II of the Form HUD-52665. Subsequently, the initial PHA must make payment each month the billing arrangement is in effect **no later than the fifth working day of each month.** The payment must be provided in a form and manner that the receiving PHA is able and willing to accept.

In many cases billing difficulties simply result from miscommunications and the PHAs involved are able to resolve the problem with HUD's assistance. HUD encourages PHAs to work cooperatively to resolve billing difficulties. However, it is ultimately the responsibility of the initial PHA to make billing payments in a timely manner.

The program regulations at 24 CFR 982.355(f)(1) provide that HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC. Upon request of the receiving PHA, HUD may exercise this authority to transfer baseline units and funding from the budget authority of the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the initial and subsequent monthly billing due dates described above (see section 11 of this notice for further information on the process by which units and funding may be transferred as a result of non-compliance with billing due dates).

The initial PHA may not terminate or delay making payments under existing billing arrangements as a result of over-leasing or funding shortfalls in the initial PHA's program. PHAs may only terminate HAP contracts to which they are a party as the result of insufficient funding in accordance with 24 CFR 982.454.

- 9. Portability-Receiving PHA: On-going Responsibilities:** The receiving PHA must send the initial PHA a copy of the updated Form HUD-50058 at each annual recertification for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount. The Form HUD-50058 should be sent to the initial PHA as soon as the family's annual reexamination is complete but no later than 10 working days following the effective date of the annual reexamination. The purpose of this notification is to serve as an annual "reconciliation" to assist both PHAs in fulfilling their accounting and record-keeping responsibilities.

Should the initial PHA fail to receive an updated Form HUD-50058 within 30 days after the effective date of the annual recertification date, it must:

1. Send a letter to the receiving PHA to verify the status of the family.
 - A copy of the letter must be sent to the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the initial PHA.
2. The receiving PHA must notify the initial PHA of the status of the family and provide the updated Form HUD-50058 if applicable within 30 days of the date of the letter. i.e. family is still on the program, family has been terminated, etc.
 - If the receiving PHA has not conducted the annual reexamination in a timely manner, they must notify the initial PHA.
3. **The initial PHA must continue paying the receiving PHA based on the last Form HUD-50058 received.**
4. If the receiving PHA fails to notify the initial PHA of the families' status or provide the updated Form HUD-50058 within 30 days following the notification, the initial PHA may request by memorandum to their OPH that HUD require the receiving PHA to absorb the vouchers in question.
 - A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached.
 - A copy of the memorandum must be sent to the receiving PHA.
 - **The initial PHA must continue to make the monthly payment to the receiving PHA until instructed otherwise by OPH.**
5. The OPH in the initial PHA's jurisdiction will notify the OPH with jurisdiction over the receiving PHA within 15 working days of receiving the initial PHA memorandum requesting the absorption of units.
6. The OPH with jurisdiction over the receiving PHA will provide the receiving PHA with 15 working days to respond and provide any supporting documentation if the receiving PHA is contesting whether the annual recertification paperwork was sent within 10 days of the effective date of the annual reexamination.

7. This information will be shared with the initial OPH and the two offices will work together to determine if the documentation supports that billing deadlines were met or if appropriate for the receiving PHA to absorb the vouchers.
8. In the event the two OPH offices cannot agree on a decision, they should contact their respective regional director(s) for resolution.
9. OPH must render a decision within 30 days of receiving the supporting documentation submitted by the receiving PHA as required in step 6 above.
10. The initial OPH will send a letter to both the initial and receiving PHAs with copies to the receiving OPH indicating the joint decision as to whether the vouchers should be absorbed by the receiving PHA.
11. If the vouchers are to be absorbed by the receiving PHA, the billing arrangement on behalf of the family or families in question ceases at the first of the following month after the date of the OPH letter (e.g., if the OPH letter is dated June 15, the billing arrangement ends July 1).
 - The initial PHA is still responsible for any outstanding payments due to the receiving PHA.

HUD may in certain instances require the initial PHA to honor a late submission of the annual recertification documents (such as where the receiving PHA is over-leased and is in danger of not being able to stay under unit months available for the Calendar Year). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee.

In cases where a family currently under a billing arrangement subsequently decides it wants to move under portability to yet another jurisdiction, the receiving PHA does not issue the family a voucher in order to do so. Instead, the receiving PHA notifies the initial PHA of the family request to port to another jurisdiction. The initial PHA is responsible for issuing the family's voucher and sending the Form HUD-52665 and supporting documentation to the new receiving PHA. Good communication between all three PHAs is very important in such a circumstance.

Changes in Billing Amount

The receiving PHA is also required to send a new Form HUD-52665 along with the Form HUD-50058 to report any change in the billing amount, if applicable. The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. However, under no circumstances should the notification be later than 10 working days following the effective date of the change in the billing amount.

If the receiving PHA fails to send the Form HUD-52665 within 10 working days following the effective date of the change in the billing amount, the initial PHA is not responsible for paying any increase in the monthly billing amount incurred prior to the notification. For example, assume the billing amount increased effective April 1, 2010. The receiving PHA does not send the Form HUD-52665 reflecting the change until July 9, 2010. In this case, the initial PHA would not be responsible to pay for any increase in the billing amount prior to the forthcoming monthly payment for August 2010. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled. For example, a decrease of \$50 was effective April 1, 2010, but the initial PHA did not receive the revised HUD-52665 until July 9, 2010. The initial PHA paid an additional \$200 (\$50 for April, May, June and July) and would offset this amount in future payments.

If the receiving PHA is absorbing a family for which it has been billing or if the housing assistance payments are terminated for any reason, the receiving PHA is encouraged to provide adequate notice of the effective date of the absorption or termination to avoid having to return a payment. In any event the receiving PHA **must** notify the initial PHA no later than 10 working days following the effective date of the termination of the billing arrangement.

The receiving PHA may not retroactively absorb families for which the receiving PHA was previously billing for any time period that commences before 10 working days from the time the receiving PHA notifies the initial PHA of the absorption (for example, if the receiving PHA notifies the initial PHA of the absorption on September 3, 2012, the family may not be retroactively absorbed to any date before August 20, 2012), with one exception: if an initial PHA is experiencing a funding shortfall and needs to take steps to avoid terminations of assistance, a receiving PHA may retroactively absorb families for which the receiving PHA was previously billing if the receiving PHA and the initial PHA agree. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption but only for the current calendar year. This cost saving strategy is consistent with PIH Notice 2011-28, Cost-Savings Measures in the Housing Choice Voucher (HCV) Program.

10. Portability-Summary of Portability Billing Deadlines: The following summarizes the relevant deadlines under the portability billing procedures.

- a. **Submission of Initial Billing Amount (Part II of the Form HUD- 52665)** –Receiving PHA must complete and mail the initial billing notice (1) no later than 10 working days following the date the HAP contract was executed and (2) in time that it will be received no later than 60 days following the expiration date of the family’s voucher issued by the initial PHA.
- b. **Payment of First Billing Amount** – Initial PHA makes payment within 30 days of receipt of Part II of the Form HUD 52665 indicating billing amount.

- c. **Payment of Subsequent Billing Amounts** – The initial PHA is responsible for ensuring that subsequent billing amounts are received no later than the fifth working day of each month for which the monthly billing amount is due.
- d. **Notification of Change in Billing Amount or Other Action** – The receiving PHA notifies the initial PHA of any change in the billing amount as soon as possible (preferably before the effective date to avoid retroactive adjustments) but in no circumstance any later than 10 working days following the effective date of the change.

11. Portability-Procedures for the Transfer of Units and Funding as a Result of Late Payments: In the case where the initial PHA fails to make the monthly payment to the receiving PHA by the fifth working day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family or families, the total billing payment that was late or has yet to be paid, and the date the payment was ultimately received (if received at all). A copy of the notification must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification (e.g., receiving PHA informs of late payment in June and the August payment is late), the receiving PHA may request by memorandum to the Director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit or units and funding in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the initial PHA.

The OPH will notify the initial PHA (and the OPH director in the HUD Area Office with jurisdiction over the initial PHA) within 15 working days of receiving the receiving PHA's memorandum requesting the transfer of units and funds. The OPH will provide the initial PHA with 15 working days to respond and provide any supporting documentation if the initial PHA is contesting whether the billing payments in question were late. The OPH in the HUD Area Office with jurisdiction over the receiving PHA is the lead HUD office in resolving any dispute over the timeliness of the billing payments. That office is responsible for examining all documentation submitted by the PHAs and then determining if the billing payments were late if the initial PHA contests the receiving PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the initial PHA had to respond to the OPH memorandum.

If the OPH determines that the payments in question were late, the OPH will send a memorandum to the Housing Voucher Financial Management Division (with copies to the Area Office with jurisdiction over the initial PHA as well as to both PHAs) indicating the number of units to be permanently transferred from the initial PHA to the receiving PHA. The number will correspond with the number of families for which billing payments were late. Within 30 days of receiving the OPH memorandum recommending transfer of units and funds, HUD will reduce the baseline number of units and concomitant budget authority from the initial PHA's ACC and increase the baseline number of units and budget authority on the receiving PHA's ACC in order to adjust the PHA program size as a result of poor portability billing performance. HUD will use the revised baseline numbers to readjust the funding.

The billing arrangement on behalf of the family or families in question ceases with the transfer of the unit, although the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Notwithstanding these transfer policies, failure to comply with the financial procedures required by HUD, including the billing and payment deadlines outlined above may also result in the reduction of administrative fees.

12. Portability-Penalties for the Receiving PHA's Failure to Inform the Initial PHA of the Termination of a Billing Arrangement in a Timely Manner: If HUD determines that the receiving PHA has not notified the initial PHA that a billing arrangement has been terminated in a timely manner and has continued to accept payments from the initial PHA, HUD may reduce administrative fees for the receiving PHA.

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least 3 months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- The receiving PHA must return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, the receiving PHA must notify the Office of Public Housing in the HUD Area Office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

HUD may, in its discretion, take the following actions:

- Direct the PHA not to utilize their administrative fee reserve account in accordance with 24 CFR 982.155(b)(3).
- Reduce the administrative fees for the receiving PHA by up to 10 percent of the monthly billing amount in question for each month that the billing payments continued after the billing arrangement was terminated, taking into consideration the circumstances of the particular case. The OPH in the HUD Area Office with jurisdiction over the receiving PHA will inform the PHA by letter of the amount of the sanction imposed as a result of the PHA's failure to promptly notify the initial PHA that the billing arrangement is terminated. The OPH must send a copy of the letter to the FMC and the FMD. (For example, if the receiving PHA was billing the initial PHA \$600 a month on behalf of a family and collected four monthly billing payments beyond the billing arrangement termination date (\$2400), the receiving PHA is responsible for returning \$2400 to the initial PHA. In addition, HUD may

reduce the PHA administrative fee by up to \$240 as the sanction for failing to terminate the billing arrangement in a timely manner.)

- Further reduce the administrative fee if the receiving PHA does not promptly return the overpayment to the initial PHA.

This general policy does not in any way restrict the OPH Director from exercising additional remedial action in the event that the receiving PHA failed to notify initial PHAs that the billing arrangements have been terminated.

The attachment to this notice provides guidance on how refunded amounts should be recorded in the financial records by both the initial PHA and the receiving PHA.

13. Denying Family Requests to Move: A PHA may only deny a family's request to move if it has grounds to do so under the program regulations, which are as follows:

- 1) The PHA has grounds to deny the move because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553.
- 2) The PHA may deny a move for a family who is a non-resident applicant, or the family was a non-resident applicant that has not yet been assisted in the initial PHA jurisdiction for twelve months since being admitted to the program (see 24 CFR 982.353(c)).
- 3) The PHA must deny a family who is an applicant and is not income-eligible (see 24 CFR 982.353(d)(1)) in the area in which they wish to initially lease a unit.
- 4) The PHA has established policies on the timing and frequency of moves in accordance with 24 CFR 982.314(c)(2), and the requested move does not comply with those policies.²
- 5) The PHA does not have sufficient funding for continued assistance to support the move in accordance with 24 CFR 982.314(e)(1).

A PHA must not establish a policy that restricts families from moving only at the time of the families' annual reexamination. The regulation at 24 CFR 982.314(c)(2) states the PHA may establish policies on two specific issues: (1) prohibiting moves during the initial lease term and; (2) a policy that may prohibit more than one move by the family during any one-year period. PHAs cannot establish more restrictive criteria than allowed by current regulatory language.

² The regulations at §982.314(c)(2) provide that the PHA may establish policies that prohibit any move by the family during the initial lease term, and policies that prohibit more than one move by the family during any one year period.

In addition, the voucher regulations at 24 CFR 982.353(b) further provide that the initial PHA must deny a family's request to move if the family has moved out of its assisted unit in violation of the lease. However, as previously noted in HUD Notice PIH 2007-5, the Violence Against Women and Justice Department Reauthorization Act 2005 (VAWA 2005) amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in violation of the lease under the portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit. The final rule, HUD Programs, Violence Against Women Act Conforming Amendments, was published in the *Federal Register* on October 27, 2010.

If the circumstances described above exist, the PHA may allow a family to move under portability procedures if the only basis for the denial is that the family is violating the lease agreement. The PHA may request that the family provide the HUD-approved certification form (Form HUD-50066), or other acceptable documentation in order to verify the family's claim that the request to move is prompted by incidences of abuse.

Denying Family Requests to Move Due to Insufficient Funding

A PHA may only deny a request to move to a higher cost unit within the PHA's jurisdiction or to higher cost area in accordance with 24 CFR 982.314(e)(1) if the PHA would be unable to avoid terminations of housing choice voucher assistance for current participants during the calendar year in order to remain within its budgetary allocation (including any available HAP reserves) for housing assistance payments.

The PHA must provide written notification to the local HUD Office when they determine it is necessary to deny moves to a higher cost unit or to a higher cost area based on insufficient funding. The notification must include the following documentation:

1. A financial analysis that demonstrates insufficient funds are projected to meet the current calendar year projection of expenses. The projection must not include vouchers that have been issued but are not yet under contract.
2. A statement certifying the PHA has ceased issuing vouchers and will not admit families from their waiting list while the limitation on moves to a higher cost unit or to a higher cost area is in place.

3. A copy of the PHA's policy stating how the PHA will address families who have been denied moves. The requirements of the policy are described below.

For moves within the initial PHA's jurisdiction, a "higher cost unit" is defined as a unit in which the PHA would have to pay a higher subsidy amount due to an increase in the gross rent for the new unit. For portability moves, a "higher cost area" is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or "more generous" subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA).

Before denying the family's request to move due to insufficient funding, the initial PHA must contact the receiving PHA and confirm via email or other confirmed delivery method whether the receiving PHA will administer or absorb the family's voucher. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. Once the receiving PHA makes the commitment to absorb the voucher, they cannot reverse their decision. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR 982.314(e)(1).

The initial PHA may also take into consideration any reported changes in the family's income or composition that may result in a decreased subsidy amount and therefore in no increased cost to the initial PHA.

A PHA **may not** deny a requested move due to insufficient funding under 24 CFR 982.314(e)(1) simply because the family wishes to move to a higher cost unit within the PHA's jurisdiction or to a higher cost area.

A PHA **may not** deny requests to move due to insufficient funding, including portability moves, if the subsidy for the new unit is equal to or less than the current subsidy being paid for the family or if the area the family has selected is a lower cost area. A "lower cost area" is defined as an area where the subsidy amount is equal to or lesser than the current subsidy paid because of lower payment standards or less generous subsidy standards (e.g. the receiving PHA issues a 2- bedroom voucher to a family that received a 3-bedroom voucher from the initial PHA).

In projecting whether there is sufficient funding available for the remainder of the calendar year in order to approve the move, the PHA may make reasonable estimates to factor in conditions such as pending rent increases and the attrition rate for families leaving the program. However, a PHA may not include projected costs for vouchers that have been issued to families from the waiting list but not yet leased as part of this analysis. Vouchers that have been issued to those on the waiting list cannot be considered an expense for purposes of determining whether to deny a move due to insufficient funding until such time that HAP contracts are executed and the PHA is legally obligated to make HAP payments.

HUD has posted a spreadsheet on the HUD Housing Choice Voucher Program website that may be used by a PHA to determine if sufficient funding is available to support to a move. The address is: <http://www.hud.gov/offices/pih/programs/hcv>. This spreadsheet is an

example of one method of determining if sufficient funding is available and a PHA is not required to use it when making its determination to deny a move under 24 CFR 982.314(e)(1). However, in any case where the PHA denies a family's request to move in accordance with 24 CFR 982.314(e)(1), the PHA must be able to demonstrate how it determined that sufficient funding was unavailable when the PHA denied the family's request to move.

The PHA must establish policies in its Administrative Plan which state how the agency will address families who have requested a move and were denied due to lack of funding once the PHA has determined funds are available for those moves. At a minimum, the PHA policy must address:

- How the PHA will inform families of the PHA's local policy regarding moves denied due to lack of funding; i.e., information contained in briefing packets or in a letter to the tenant at the time the move is denied.
- How long the family's request to move will be open for consideration and how the PHA will notify families with open requests when funds become available.

A PHA may not deny a family's request to move to a higher cost unit or a higher cost area because it wishes to admit additional families from its waiting list into its voucher program, regardless of whether it has unit months available (UMA) to do so. If the PHA denies a family's request to move, it may not subsequently admit any additional families to its voucher program until the PHA has followed the policy as described above.

If a PHA approves a family's request to move and then subsequently experiences a funding shortfall, the PHA may only retract the voucher if the family would be allowed to remain in their current unit. If the family cannot remain in the unit, (e.g. family has already vacated the unit or family has already notified the owner of their intent to vacate and the owner has re-let the unit to another family) the PHA must not retract the voucher. This requirement applies to moves both within the PHA's jurisdiction and to portability moves.

An initial PHA may not terminate a portability voucher under a billing arrangement with a receiving PHA for insufficient funding since the initial PHA is not a party to the HAP contract.

Penalties for PHAs that improperly deny requests to move on the basis of insufficient funding

In general, if HUD determines that a PHA did not follow the policies established in this Notice and has improperly denied a family's request to move due to insufficient funding (e.g., sufficient funding was in fact available at the time of the family request to support the move; PHA failed to comply with request for additional information to support the insufficient funding from the Field Office), HUD may impose a sanction on the PHA, which may include a reduction in the PHA's administrative fee³ of up to 10 percent for the two quarters following the quarter that HUD identified the improper denial, taking into

³ The reduction would be applied to PHA's prorated administrative fee (assuming that a pro-ration factor applies to the PHA administrative fees during the two quarters the penalty is imposed by HUD).

consideration the circumstances of the particular case. The Office of Public Housing in the HUD Area Office with jurisdiction over the PHA will inform the PHA by letter and will send a copy to the HUD Financial Management Center (FMC) and the Financial Management Division (FMD) to effectuate the fee reduction.

This general policy for improperly denying the family's request to move under 24 CFR 982.314(e)(1) does not in any way restrict HUD from exercising additional remedial actions or imposing sanctions in the event the PHA is denying requests by families to move under portability in violation of program requirements, including fair housing and civil rights requirements.

- 14. Portability and Project-based Assistance:** In accordance with 24 CFR 983.2(b)(2), provisions on portability do not apply to the PBV program. A family that is porting into a receiving PHA's jurisdiction may only receive a tenant-based voucher or homeownership assistance. In order for a tenant based voucher holder to be housed in a PBV unit, the family would have to apply to the receiving PHA's PBV program and give up their tenant-based voucher prior to being housed in the PBV unit.
- 15. PIC Data Entry.** The following summarizes the correct action codes to use when completing the Form HUD-50058 for portable families.

a. Portability Move-in or New Admission

HUD-50058 Line Number 2a
Action Code = 4 or 1

The receiving PHA classifies a family as a **4-Portability Move-in** if the family moves into a receiving PHA's jurisdiction after being previously assisted by an initial PHA regardless of whether the receiving PHA absorbs the family or bills the initial PHA.

The receiving PHA classifies a family as a **1-New Admission** if the family exercises portability with its first admission into the voucher program. This family (generally off the waiting list) would have received a voucher for the first time from the initial PHA and exercised portability without ever having leased an assisted unit in the initial PHA's jurisdiction.

Effective Date of Action (Line 2b) is the effective date of the HAP contract for the family.

b. Portability Move-out

HUD-50058 Line Number 2a
Action Code = 5

A family is classified as a **5-Portability Move-out** if the family moves out of an initial PHA's jurisdiction, where it had been previously assisted, and into a receiving PHA's jurisdiction, regardless of whether the receiving PHA bills the initial PHA or absorbs the family.

PIC automatically generates a 5-Portability Move-out for the family record when the receiving PHA completes the 4-Portability Move-in for the family moving under portability.

c. Additional Data Entry Requirements

HUD-50058 Line Number 12d

If the family moved into a PHA's jurisdiction under portability as a new admission or portability move-in, regardless of whether the family is absorbed into the receiving PHA's jurisdiction or the initial PHA is billed, the PHA must enter Y in this field. That field will not change as long as the family continues to be assisted in the receiving PHA's jurisdiction, even if the receiving PHA decides to absorb the family after first billing the initial PHA.

HUD-50058 line 12f

Since a PHA is not responsible for submitting reports into PIC for families whose assistance is being administered by another PHA under portability, the PHA code of the billed PHA must be entered correctly on this line in order for reporting rates to be accurate.

It is crucial that PHAs enter timely and accurate information on portability families, as this data is used by HUD when determining whether a PHA is eligible for any additional funding that may be available for PHAs that are paying portability costs above their normal average costs. HUD encourages PHAs to review the PIC records periodically to ensure they are properly identified if such funding is made available under the Appropriations Act.

d. Issuance of Voucher.

HUD-50058 line 2a
Action Code =10

PHAs are required to enter an action code 10 (Issuance of Voucher) only before submission of an action code 1 (New Admission) and an action code 4 (Portability Move-in).

- 16. Paperwork Reduction Act.** The information collection requirements contained in this Notice 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 numbers 2577-0169 and 2577-0083. 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.
- 17. Further Information.** Any questions pertaining to the portability procedures may be addressed to Amaris Rodriguez or Susannah Still, Housing Program Specialists, Housing Voucher Management and Operations Division by electronic mail at Amaris.Rodriguez@hud.gov or Susannah.W.Still@hud.gov.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing

Attachment

Guidance on PHA Entries for Returning Unearned HAPs and Fees under Portability

A number of cases have surfaced in which the receiving PHA did not promptly inform the initial PHA that billing arrangements were terminated as the result of absorption by the receiving PHA or families leaving the program. As a result the initial PHA continued to make monthly payments for housing assistance payments and administrative fees to the receiving PHA. The receiving PHA is required to refund the excess payments to the initial PHA.

The following guidance is provided regarding the appropriate accounting entries to accommodate the returned payments.

RECEIVING PHA:

Normally, the receiving PHA would have done the following when the HAP was paid to the owner on behalf of the family:

DR	Accounts Receivable – Initial PHA (for HAP and fee)
CR	Income (for Fee)
CR	Cash (for HAP payment)

Upon receipt of payment of HAP and fees from the initial PHA, the Receiving PHA would have:

DR	Cash
CR	Accounts Receivable – Initial PHA

Typically, when the billing arrangement ceased the first set of transactions did not happen (the owners were not paid and the income was not recorded) because the receiving PHA had terminated the HAP contract. The receiving PHA failed to inform the initial PHA and continued to debit Cash and credit Accounts Receivable when the payment arrived from the initial PHA. The large CR balance in the Accounts Receivable is abnormal and the receiving PHA should have recognized something was amiss.

When the receiving PHA returns funds it should not have received to the initial PHA, the receiving PHA would:

DR	Accounts Receivable – Initial PHA
CR	Cash

When all refunds are made, the Accounts Receivable balance should be zero or at normal levels.

INITIAL PHA:

When the initial PHA recognized the obligation under the billing arrangement for the family that moved under the portability procedures it would have created the expense and the payable:

DR	Expense – Control (and subsidiaries for HAP and administrative expenses)
CR	Accounts Payable – Receiving PHA

When the initial PHA then paid the receiving PHA:

DR	Accounts Payable – Receiving PHA
CR	Cash

When the initial PHA receives the funds back from the receiving PHA:

DR	Cash
CR	Expenses – Control (and subsidiaries)