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

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

Notice PIH 2005-9 (HA)

Issued: February 25, 2005

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Cross References: HUD Notice PIH 2005-1 (HA) Implementation of the Consolidated Appropriations Act (HR 4818 – H Rept 108-792), 2005 Funding Provisions for the Housing Choice Voucher Program

Subject: Public Housing Agency (PHA) Flexibility to Manage the Housing Choice Voucher Program in 2005

1. Purpose. This Notice provides guidance on administrative flexibility and actions PHAs may take to reduce costs in the Housing Choice Voucher Program ("the voucher program") in accordance with the Consolidated Appropriations Act, 2005 (Public Law 108-447).

2. Background and Discussion of Appropriations Act Conference Report. Notice PIH 2005-1, issued December 8, 2004, provides guidance on implementation of the Consolidated Appropriations Act, 2005 ("the Act") provisions for the voucher program. On December 9, 2004, HUD broadcast a webcast presentation on the FY 2005 funding for the voucher program, and HUD staff conducted numerous follow-up conferences with PHAs in various locations across the country.

As PHAs must manage their programs within the amounts budgeted for the calendar year, and may have to implement various cost-savings measures, the Conference Report (H. Rpt. 108-792) accompanying the Act provides guidance on the administrative flexibility given to HUD and PHAs to manage the voucher program within a fixed budget and with certain limitations. The Conference Report states, in relevant part:

> "HUD shall provide all public housing agencies (PHAs) with a fixed, annual budget that each agency must manage their voucher programs within for 2005... This new structure is designed to provide flexibility for PHAs to manage their voucher programs, so long as such flexibility meets current legal requirements

and PHAs manage within their annual budgets. This could include lowering eligible rents in order to expand utilization to no greater than their authorized levels. PHAs are expected to manage utility costs, decreased tenant contributions and protect the most at-risk families within these budgets."

"HUD shall also provide agencies with flexibility to adjust payment standards and portability policies as necessary to manage within their 2005 budgets. Agencies shall ensure that current elderly and disabled voucher families be protected against significant impacts resulting from adjustments made by agencies to maintain their voucher programs within their 2005 budgets."

The local PHA has the discretion to define "significant impacts" resulting from adjusting payment standard and portability policies. For example, a PHA may opt to define "significant impacts" as termination of assistance, or to expand the local list of results that are deemed as "significant impacts".

3. PHA Actions to Reduce Voucher Program Costs. Based on the 2005 Appropriations Act Conference Report language, as well as existing authority under the voucher program regulations at 24 CFR Part 982, possible PHA cost-saving actions are described below, by topic. Some of these actions are necessary just to ensure compliance with program requirements (e.g., ensuring that owner rents are reasonable) and should be taken by all PHAs, irrespective of whether the PHA is experiencing financial difficulties. This is not intended to be an exhaustive list of permissible PHA cost savings actions.

a. Payment Standards. The PHA may opt to lower payment standards. In the tenant-based rental voucher program, a lower payment standard applies immediately to all new admissions, all movers, and stayers with a new HAP contract (e.g., when the owner offers or requires a new lease). For all other tenant-based rental voucher participants, decreased payment standard amounts are not applied until the second regular reexamination after the payment standard is lowered. The delayed applicability of a lower payment standard is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request HUD to waive this requirement, for good cause. Such waiver requests should be sent directly to HUD Headquarters to the attention of Dr. Alfred C. Jurison at 451 7th Street, S.W., Room 4210, Washington, D.C. 20410.

PHA requests to approve payment standards below 90 percent of the Fair Market Rent may be approved by HUD field offices. However, §982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request HUD to waive this requirement, for good cause. Such waiver requests should be sent directly to HUD Headquarters to the attention of Dr. Alfred C. Jurison at 451 7th Street, S.W., Room 4210, Washington, D.C. 20410.

PHA regulatory waiver requests concerning payment standards must provide justification for the waiver. For example, a PHA may have insufficient funding to continue to assist current participants within the 2005 funding amounts at current payment standards. In such a situation, a PHA may be required to more quickly impose lower payment standards in order to maintain an appropriate level of service. PHA waiver requests should, at a minimum, include the calculation the PHA used to arrive at the projected shortfall in funding, after factoring in anticipated turnover of vouchers, as well as any cost savings measures the PHA has already taken or will take in the future. In addition, PHAs must include the actions they have taken to protect "at risk" families, the current rent burden to families prior to the implementation of the lower payment standard, and an affirmative statement that the implementation of the waiver will allow the PHA to manage its programs within its budgetary allocation.

The regulatory waiver considerations above are only applicable to the tenant–based rental voucher program.

b. Utility Allowances. The PHA may review utility allowances to determine if they are too high. Changes in utility allowances may be implemented immediately, but not later than the next regularly scheduled reexamination of family income.

Section 982.517(c) of the voucher regulations requires PHAs to revise utility allowances whenever there is a utility rate increase of ten percent or more. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request HUD to waive this requirement, for good cause. Such waiver requests should be sent directly to HUD Headquarters to the attention of Dr. Alfred C. Jurison at 451 7th Street, S.W., Room 4210, Washington, D.C. 20410.

c. Portability and Moves Within the PHA Jurisdiction. The PHA may opt to deny portability moves, and moves within the PHA jurisdiction, if the PHA does not have sufficient funds under its calendar year 2005 budget to subsidize families that move to a higher cost area or unit. "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). This is a denial to move for insufficient funding under §982.314(e)(1). In such cases, the PHA must determine that based on its current funding level, it has insufficient funds to pay for higher subsidy amounts for families wishing to move to more expensive areas or units. Note also that in the case of portability moves, the PHA would need to contact the receiving PHA and confirm that the receiving PHA will not absorb the family. If the receiving PHA is willing to absorb, there are no grounds to deny the portability move under §982.314(e)(1). PHAs do not need a regulatory waiver from HUD to make a determination in order to deny such moves.

d. ACC Reserves. Starting in calendar year 2005, the Department will no longer exercise its option to establish and maintain an Annual Contributions Contract

(ACC) reserve account for the voucher program pursuant to 24 CFR 982.154. PHAs are provided a fixed amount of funds to assist as many families as possible, provided that on December 31, 2005 the number of unit months leased for the calendar year does not exceed the cumulative number of unit months available for the same period.

As discussed in HUD Notice PIH 2005-1, HUD will move to reduce existing ACC reserves (attributable to funding prior to 2005) to no more than a one-week level in order to meet the calendar year 2005 rescission. The Conference Report states: “The conferees direct that a portion of this rescission be met by reducing public housing agencies’ program reserves to no more than one week as assumed in the budget request” (it is important to note that the Department’s 2005 budget request was premised on passage of the Flexible Voucher Program proposal and not the current unit based program).

In order to determine the amount of ACC reserves subject to recapture, HUD will start with a PHA’s ACC reserve balance in the latest approved Year-End Settlement Statement (form HUD-52681), and will update the PHA’s reserve balance through December 31, 2004 using Voucher Management System (VMS) data to arrive at the PHA’s pre-2005 ACC reserve balance. To the extent a PHA’s eligible Housing Assistant Payment (HAP) expenses for the period January 1, 2005 through March 31, 2005 exceed its approved budgetary allocation for the same time period, HUD will reduce the reserve to arrive at the PHA’s final pre-2005 reserve balance.

HUD will then calculate the equivalent of one week of eligible HAP expenses, based on the November 2004 through January 2005 VMS information, and recapture the excess of final pre-2005 ACC reserves over one week of eligible HAP expenses.

e. Ensuring Reasonable Rents. PHAs do not have to wait until the Housing Assistance Payments (HAP) contract anniversary date to review owner rents and reduce them if warranted. The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units in accordance with the regulations at §982.507(b) and the HAP contract. The PHA should ensure that owner rents do not exceed the amount being charged by the owner for unassisted units in the same building or complex. The initial rent and all rent increases must comply with any State or local rent control limits. Further, any owner leasing promotions for unassisted tenants (e.g., the initial 2 months of occupancy are "rent free") must be taken into consideration in determining rent reasonableness.

The PHA must provide written notice, in accordance with the HAP contract, to the owner before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to owner is not reasonable as most recently determined by the PHA, the owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a voucher to find a new unit, and any lower payment standard or correction to the family unit size would be applicable immediately.

Even if an owner's rent is reasonable, a PHA could request the owner to voluntarily agree to a temporary rent reduction or defer a rent increase to avoid termination of family assistance and HAP contract termination. It is the owner's option to agree to such measures.

f. Termination of Assistance Due to Insufficient Funding. The PHA may terminate HAP contracts, in accordance with HUD requirements, if the PHA determines that "funding under the consolidated ACC is insufficient to support continued assistance for families in the program" (§982.454).

PHA termination policies due to insufficient funding should be added to the administrative plan. Such policies should describe how the PHA will determine which HAP contracts will be terminated. Any PHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan.

Before terminating HAP contracts on the basis of insufficient funding, the PHA needs to ensure that the determination of such fact is documented.

4. Other Possible PHA Policies to Reduce Costs.

a) Voucher Issuance. Stop issuing turnover vouchers or pull back outstanding vouchers for applicants searching for housing (that have not yet resulted in an executed HAP contract).

b) Subsidy Standards. Revise "overly generous" subsidy standards to reduce bedroom size eligibility. A subsidy standard of two persons per bedroom, regardless of sex or age, is acceptable. An efficiency subsidy standard (0-bedroom unit) for single person households is acceptable. If a family leases a unit larger than the unit size on the voucher, ensure that the payment standard is based on the lower of the voucher unit size or the actual unit size leased. If the family size is reduced after admission, ensure that the correct the payment standard is used. An "empty nester" single individual living in a 3-bedroom unit should have a 0- or 1-bedroom payment standard, not a 3-bedroom payment standard. If the unit size for which the family is eligible changes during the term of the HAP contract, the "new" unit size is applicable at the first regular reexamination following the change (§982.505(b)(5)).

c) Minimum Rent. Increase the minimum rent to \$50. The effective date for the increased minimum rent is dependent upon PHA policy. A PHA could institute a policy for increases in family contribution to be effective immediately, before the next reexamination.

d) Family Income Matching/Verification and Other Anti-Fraud Efforts. Accelerate efforts concerning income matching and income verification. PHAs could notify families that enforcement action could be taken where underreporting of income is discovered.

e) Interim Reexaminations. Require families to report all increases in income between reexaminations, and conduct more frequent interim income reviews for families reporting no income. The effective date of an annual or interim reexamination of family income is dependent upon PHA policies.

Any questions concerning this Notice should be directed to Dr. Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 708-0477. This is not a toll-free number.

/s/

Michael Liu, Assistant Secretary for Public and Indian Housing