



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

Notice PIH 2005-1 (HA)

Special Attention of:

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

Issued: December 8, 2004
Expires: December 31, 2005

Cross References: Federal Register Notice FR-4459-F-03, Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program, Formula for Allocation of Housing Assistance; 24 CFR Part 982, Subparts C and D; Notice PIH 2004-7 Implementation of FFY 2004 Omnibus Appropriations Act Provisions for the Housing Choice Voucher Program.

Subject: Implementation of the Consolidated Appropriations Act (HR 4818 – H Rept 108-792), 2005 Funding Provisions for the Housing Choice Voucher Program.

1. **Purpose.** This Notice implements the Housing Choice Voucher (HCV) Program funding provisions resulting from enactment of the Consolidated Appropriations Act, 2005. In this law, Congress modifies the method of calculating and distributing renewal funds, public housing agency (PHA) administrative fees, and continues to prohibit the use of renewal funds for over-leasing. The Act specifies that calendar year 2005 will be the funding period for such renewals and administrative fees under the HCV program.

The requirements of the Act supersede any other Notice or regulation to the extent that such Notice or regulation is inconsistent with the Act. This Notice describes the requirements of the Act, and supersedes relevant sections of Federal Register Notice FR-4459-F-03, Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program, Formula for Allocation of Housing Assistance; 24 CFR Part 982, Section 982.102.

2. **Background.** In HUD's Fiscal Year (FY) 2004 Appropriations Act, Congress enacted changes in the HCV Program to fund each PHA based on leasing and costs as of May-July 2003, adjusted for inflation for 2004. Congress also provided a Central Fund to accommodate increased, authorized leasing. In HUD's FY 2005 Appropriations Act, further changes in the HCV program have been enacted which will require PHAs to control the increasing costs of vouchers.
3. **Statutory Basis (refer to Appendix A for the Conference Report).**
[The dollar amounts reflected below in the Act will be reduced by a 0.8% across-the-board-reduction as enacted by Congress (Division J, Title I, Section 122 as amended by House Concurrent Resolution 528)]

For activities and assistance for the provision of tenant-based rental assistance authorized under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) ("the Act" herein), not otherwise provided for, \$14,885,000,000, to remain available until expended, of which \$10,685,000,000 shall be available on October 1, 2004 and \$4,200,000,000 shall be available on October 1, 2005: Provided, That the amounts made available under this

heading are provided as follows:

(1) \$13,462,989,000 for renewals of expiring section 8 tenant-based annual contributions contracts (including renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act): Provided, That notwithstanding any other provision of law, from amounts provided under this paragraph, the Secretary for the calendar year 2005 funding cycle shall renew such contracts for each public housing agency based on verified Voucher Management System (VMS) leasing and cost data averaged for the months of May, June, and July of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: Provided further, That if such data is not available, verifiable, or complete, the Secretary shall use verified VMS leasing and cost data averaged for the months of February, March, and April of 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: Provided further, That if such data is not available, verifiable, or complete, the Secretary shall use leasing and cost data from the most recent end-of-year financial statements for public housing agency fiscal years ending no later than March 31, 2004, and by applying the 2005 Annual Adjustment Factor as established by the Secretary, and by making any necessary adjustments for the costs associated with the first-time renewal of tenant protection or HOPE VI vouchers: Provided further, That the Secretary shall, to the extent necessary to stay within the amount provided under this paragraph, pro rate each public housing agency's allocation otherwise established pursuant to this paragraph: Provided further, That the entire amount provided under this paragraph shall be obligated to the public housing agencies based on the allocation and pro rata method described above: Provided further, That public housing agencies participating in the Moving to Work demonstration shall be funded pursuant to their Moving to Work agreements and shall be subject to the same pro rata adjustments under the previous proviso: Provided further, That none of the funds provided in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract;

(2) \$163,000,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omni-bus Consolidated Rescissions and Appropriations Act of 1996

(Public Law 104-134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act, and tenant protection assistance, including replacement and relocation assistance;

(3) \$46,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(4) \$2,904,000 shall be transferred to the Working Capital Fund; and

(5) \$1,210,107,000 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program, of which up to \$25,000,000 shall be available to the Secretary to allocate to public housing agencies that need additional funds to administer their section 8 programs: Provided, That \$1,185,107,000 of the amount provided in this paragraph shall be allocated for the calendar year 2005 funding cycle on a pro rata basis to public housing agencies based on the amount public housing agencies were eligible to receive in calendar year 2004: Provided further, That all amounts provided under this paragraph shall be only for activities related to the provision of tenant-based rental assistance authorized under section 8, including related development activities.

4. **Renewal Funding for Vouchers – Calculation of Calendar Year 2005 Budgets.**

Calendar year 2005 budgets for renewal funding will be based on the following process: (a) voucher utilization and costs, including enhanced vouchers, will be obtained from the Voucher Manager System (VMS) to the extent the data is available, verified, and complete for the months of May, June and July of 2004; (b) from these three months of VMS data, a one-month cost for vouchers, adjusted for over-leasing, will be calculated and multiplied by twelve to determine a twelve-month budget for calendar year 2005; (c) a HUD-published annual adjustment factor (AAF) will then be applied to the twelve-month budget (calculated as described in (b) above) to reflect inflation; (d) HUD will make necessary adjustments to individual PHA budgets in order to reflect allocations of tenant protection (e.g. Housing conversion actions such as preservation prepayments and Section 8 project-based opt-outs) or HOPE VI vouchers given to PHAs on or after March 1, 2004; and (e) HUD will then determine the total amount needed to fund all PHA budgets, compare such amount to the total amount appropriated in 2005 for renewals, and prorate each PHA's calendar year budget to ensure that the amount allocated to PHAs does not exceed the amount appropriated.

The following hypothetical examples illustrate the calculations to be used by HUD to determine the appropriate funding amounts for calendar year 2005:

Example 1:

The Housing Authority City of Pleasantville (HACP) transmitted to HUD the following information in VMS:

	May	June	July
Housing Assistance Payment (HAP)	\$1,000,000	\$1,050,000	\$1,100,000
Unit Months Leased (UML)	2,050	2,100	2,150

The average Unit Months Available (UMA) for HACP based on the same three months as shown in HUDCAPS is 2,150. Therefore, HACP is **not over-leased**.

After validating the accuracy of the VMS data, HUD will calculate the average monthly HAP for HACP by adding the three months of HAP and dividing by three. In this example, the average monthly HAP for HACP is \$1,050,000 ($\$1,000,000 + \$1,050,000 + \$1,100,000 = \$3,150,000$ divided by 3). The average monthly HAP is then multiplied by 12 to arrive at the HACP's annual budget of \$12,600,000 ($\$1,050,000 \times 12$).

Inflation - HACP's annual budget of \$12,600,000 is then inflated for 2005 by adding an annual adjustment factor. For example, HACP's AAF for 2005 is 1.5%. Therefore, HACP's annual budget is inflated to \$12,789,000.

Adjustments for Tenant Protection/HOPE VI Voucher Allocations - HUD provided HACP an allocation of 100 tenant protection vouchers on October 1, 2004. While these 100 vouchers are funded for one year out of HUD's Tenant Protection Account, HUD will adjust HACP's 2005 budget in order to provide renewal funding in October 1, 2005 for these 100 vouchers through the end of the calendar year. HUD will calculate a voucher cost from the May-July 2004 VMS data to apply to these 100 tenant protection vouchers.

In this example, HACP's average voucher cost in VMS for May-July 2004 was \$500. Therefore, HUD will add \$150,000 ($\$500 \times 100 \text{ vouchers} \times 3 \text{ months}$) plus the 1.5% AAF factor for a total of \$152,250 to HACP's 2005 budget to cover the 100 vouchers for October through December 2005.

This adjustment for new tenant protection vouchers brings HACP's 2005 budget to \$12,941,250.

HUD will then prorate HACP's 2005 budget of \$12,941,250. HUD will first divide the total 2005 tenant-based appropriation of \$13,462,989,000 (to be adjusted by necessary across the board reductions) by the total value of all 2005 PHA budgets as calculated in this example and described in this notice.

An example of this is shown below:

Hypothetical Scenario:

Total 2005 tenant-based voucher funding	<u>\$13,462,989,000</u> = 99%
Total of 2005 PHA budgets*	\$13,599,000,000

HUD will then provide HACP's with 99% of its 2005 budget of \$12,941,250.
HACP's final 2005 budget will be \$12,811,838.

* **NOTE:** HUD does not yet know the total of all 2005 PHAs budgets and has not yet calculated the actual proration to be used. The amount shown above is for illustration purposes only. The final proration could be +/- 100%.

Example 2:

Fact pattern is the same as in example 1 except that average UMA for HACP for the period May – July, 2004 are 2,000 and there are no tenant protection/HOPE VI allocations.

We first calculate the average UML for the same period. This yields an average of 2,100 ($2,050 + 2,100 + 2,150 = 6,300$ divided by 3). Because the average UML exceed the average UMA of 2,000 this PHA is over-leased.

To calculate the PHA budget for an agency that is over-leased, HUD will first calculate an average voucher cost for the three months May-July. In this case, the average voucher cost of \$500 is then multiplied by the average UMA. This produces a monthly budget of \$1,000,000 ($\$500 \times 2,000$). This amount is then multiplied by 12 to arrive at HACP's annual budget of \$12,000,000 ($\$1,000,000 \times 12$). Next, the "1.5% AAF" factor is applied to arrive at a PHA budget of \$12,180,000. HUD will then apply to HACP's 2005 budget of \$12,180,000 the 2005 hypothetical proration rate of 99%. HACP's final 2005 budget will be \$12,058,200.

HUD's 2005 Appropriations Act clearly directs HUD to provide funding to PHAs based on annual budgets as determined by specific data and adjustments described above. If a PHA failed to submit complete, verifiable data into VMS for the months of May, June and July of 2004, Congress directs HUD to then use the average of VMS data from February, March and April 2004 and then apply the 2005 AAF. In event that a PHA has failed to submit complete and verifiable data into VMS for that time period, Congress directs HUD to use year-end financial statements for PHA fiscal years ending no later than March 31, 2004 and then apply the 2005 AAF.

The specific annual adjustment factors (AAF) that HUD uses pursuant to Congress' direction to reflect inflation in 2005 can be found on HUD's web site at: <http://www.hud.gov/offices/pih/programs/hcv/>. This link not only provides specific AAFs for each area, but also explains how the AAFs were calculated. PHAs need to understand that the 2005 calendar year voucher budgets will be

determined based on the procedure laid out above, which is specified in the Act, and will serve to determine every PHA's **total and final renewal funding amount** for vouchers in calendar year 2005. Unlike the FY 2003 and 2004 Appropriations Acts, this Act makes no provision for a central fund for additional leasing or for an appeal mechanism for a significant increase in per unit costs in excess of the published 2005 AAFs. There will be no use of specified carryover or recaptured funds, and no ability or funding to restore any program reserves. PHAs will have to manage their voucher programs including leasing levels and costs in accordance with their calendar year 2005 voucher budgets. Within these annual budgets, PHAs have the flexibility to address both increases and decreases in housing costs during the year.

To assure the accuracy of the HUD calculated budgetary allocations, HUD will provide each PHA the leasing information used for the calculations (both UMAs and UMLs for the May-July 2004 period) as well as new tenant protection or HOPE VI units funded on or after March 1, 2004. Once this information becomes available, PHAs will then have ten calendar days to provide HUD with any necessary adjustments prior to HUD finalizing the budgetary allocations. To preclude delays in the January 2005 payments, HUD will utilize the budgetary allocations prior to any PHA identified adjustments and will make any necessary adjustments in the final allocations. The 2005 Appropriations Act does not permit use of 2005 funds to support additional families over the established baseline (units under ACC).

5. **Funding for Administrative Costs.** For calendar year 2005, \$1,185,107,000 (adjusted by necessary across the board reductions) in administrative fees will be allocated to PHAs on a pro rata basis, according to the amount they were eligible to receive in calendar year 2004. This pro rata provision is similar to the provision in the 2004 Appropriations Act. The Act also provides \$25 million for PHAs that need additional funds to administer their voucher programs. The Department will distribute these additional funds, until funds are depleted, for administrative costs such as hard-to-house costs, excess costs resulting from federally declared disasters, housing conversions, homeownership program closings and lead-based paint testing and risk assessments. Eligibility for these fees remains the same as in prior years.

The 2005 Appropriations Act stipulates that administrative fees provided from this appropriation shall only be used for activities related to the provision of Section 8 tenant-based rental assistance, including related development activities. Any administrative fees from 2005 funding (and 2004 funding) that are subsequently moved into the administrative fee reserve account at year end must only be used for the provision of Section 8 tenant-based rental assistance, including related development activity.

6. **Some Budget Management Considerations.**

- A. Review the rent to owner to determine if the rents are reasonable. During the HAP

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

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

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

B. Subsequent Moves and Portability. The program regulations at 24 CFR 982.314(e)(1) provide that, at any time, the PHA may deny permission to move if the PHA does not have sufficient funding for an increase in assistance. For instance, a PHA has the authority to deny a family's request to move under the portability procedures to a unit in another jurisdiction that would require the PHA to pay a higher subsidy cost for the same family's assistance if the PHA determines it does not have sufficient funding available under their calendar year 2005 budget to accommodate such a move and the receiving PHA will not absorb the family into its own program.

7. **Over-Leasing**. The Act prohibits the use of amounts provided for renewals from being used by any PHA for over-leasing. Given the calendar year 2005 funding cycle for renewals in the Act, over-leasing is defined as unit months leased in excess of unit months available for authorized baseline vouchers as of the **end of calendar year 2005**.

If a PHA engages in over-leasing, it must identify available ACC reserves in its account from pre-FFY 2003 appropriations, administrative fee reserves, or other sources to pay for the over-leasing, or the PHA must take immediate steps to eliminate any current over-leasing. PHAs should consult with their Public Housing field office staff for assistance in determining needed actions. Any expenditures for over-leasing from renewal funds made available under this Act will be disallowed on the year-end settlement. HUD has no authority to provide funds to support unit months leased in excess of the PHA's baseline, and will not do so.

Furthermore, HUD-PIH will be deploying Quality Assurance teams to conduct on-site reviews of housing agencies to ensure the integrity of PHA reported data for the Voucher program, as well as to ensure compliance with program requirements, including over-leasing. QA staff will also review compliance with rent reasonableness requirements to ensure that owners are receiving rents that are comparable to similar

units in the market.

8. **ACC Reserve Account.** Any ACC reserves are subject to recapture at any time by HUD. Specifically, in the conference committee report, with respect to the Housing Certificate Fund rescission, “the conferees direct that a portion of this rescission be met by reducing public housing agencies’ program reserves to no more than one week”. HUD will comply with this Congressional directive.
9. **PHA Requirements.**
 - A. PHAs must continue to submit required financial documents. That includes, but it is not limited to, the quarterly VMS submissions and the Year-End Settlement Statements. **PHAs are no longer required to submit annual budgets to the FMC.** PHAs will receive monthly disbursements from HUD on the basis of the PHA’s calculated calendar year 2005 budget. PHAs also have the ability to request adjustments to monthly disbursements by contacting their financial analyst at the Financial Management Center (FMC). HUD will issue further guidance relating to the Year-End Settlement Statements which, subsequent to the last quarter in calendar year 2005, will be based on calendar years rather than a PHA’s fiscal year end.
 - B. PHAs must electronically submit form HUD-52681B when due. Submittals are due for every month, according to a schedule HUD will periodically provide. The Department will use the latest data provided by each HA in these submittals to monitor program activity.
 - C. PHAs must manage their programs in a prudent manner, to enable them to serve families within their calendar year 2005 budget and voucher baseline. PHAs should review their policies and operations, to ensure they are not incurring HAP costs beyond what is needed to support decent housing of a modest nature within market rents for participants.
 - D. PHAs that fail to meet the above requirements will be subject to administrative actions including, but not limited to, a reduction in administrative fees paid.
10. **Regulations and Notices Superseded.** The Act supersedes the following provisions of 24 CFR 982.102:
 - Determining number of renewal units: The budget authority allocated for renewal of an expiring funding increment will be based on the leasing data prescribed in the Act, and accordingly, will no longer be based on the number of reserved units (as provided for at 24 CFR 982.102(c)(1) and (d)).
 - Determining per unit cost: The program expenditures upon which the per-unit HAP cost is determined will be based on the cost data prescribed in the Act and will no

longer be based on the most recent HUD-approved year-end settlement, (as provided for at 24 CFR 982.102(e)(1)) except as explicitly authorized under the Act.

11. **Moderate Rehabilitation Program.** The changes implemented by this Notice do not apply to the Section 8 Moderate Rehabilitation Program.
12. **Moving-to-Work Program.** Moving- to-Work agencies will continue to have their funding determined pursuant to their MTW agreements. HUD is directed by the Act, however, to apply the same proration factor to the HCV budgets for MTW agencies as is applied to all other PHAs.
13. **Administrative Fee Reserve Account.** Please refer to Section #5 above for restrictions on the use of calendar year 2005 administrative fees. PHAs should continue to be aware of the policy on unauthorized transfers of the administrative fee reserve. This restriction applies to reserves emanating from calendar year 2004 and prior years.

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

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

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

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Any questions concerning this Notice should be directed to the Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, at (202) 708-2934 (this is not a toll-free number).

_____/s/
Michael Liu, Assistant Secretary
for Public and Indian Housing