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E-NAHMAAnalysis 2004-1214: HUD Notice on 2005 Voucher Funds

On December 8, 2004 HUD's Office of Public and Indian Housing issued Notice PIH 2005-1 (HA). The notice describes how HUD-PIH will implement provisions for funding for the Housing Choice Voucher (HCV) Program in 2005, as per the Consolidated Appropriations Act (a.k.a. FY 2005 omnibus appropriations bill). Excerpts from Notice PIH 2005-1 (HA) and items of interest to management agents and owners follow.

The notice includes the legislative language from the omnibus bill which provides the statutory basis for this notice. It cites the funding levels and legislative language to accompany each line item in the HCV account. It also notes the dollar amounts will be reduced by the 0.8% across-the-board-cut (which was applied to non-defense, non-homeland security discretionary accounts in the omnibus).

Total funding for tenant-based rental assistance: \$14,885,000,000

Renewals of expiring Section 8 tenant-based ACCs (including enhanced voucher renewals):
\$13,462,989,000

It is under this line item that Congress specified the 2005 funding formula for the HCV program. The bill says, "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." The legislation goes on to direct HUD how to proceed if such information is not available.

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": \$163,000,000

Family self-sufficiency coordinators: \$46,000,000

Transfer to the Working Capital Fund: \$2,904,000

PHA administrative fees for tenant-based Section 8: \$1,210,107,000

Based on the statutory requirements in the omnibus bill, the following excerpt describes how HUD will allocate funds to the PHAs:

“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 Act specifies that calendar year 2005 will be the funding period for such renewals and administrative fees under the HCV program.”

If a PHA’s information is not available in VMS for May, June and July of 2004, HUD is to use the average of VMS data from February, March and April 2004 and then apply the 2005 AAF. If the PHA does not have the information in VMS for those months, HUD must use the year-end financial statements for PHA fiscal years ending no later than March 31, 2004 and then apply the 2005 AAF.

The notice emphasizes that PHAs will have to make due with the funding they receive. It notes that the omnibus provided neither a central fund for additional leasing nor an appeal process for significant increases in per unit costs which exceed the 2005 AAFs. Likewise, “There will be no use of specified carryover or recaptured funds, and no ability or funding to restore any program reserves.”

Agents and Owners should be aware of the following directive to PHAs that HUD instructed under the section of the notice entitled “Some Budget Management Considerations.” Specifically, HUD instructs,

“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.”

Notice PIH 2005-1 (HA) also advises PHAs that program regulations at 24 CFR 982.314(e)(1) permit them to deny a voucher holder permission to move if the PHA does not have sufficient funding to pay for an increase in assistance.

PHAs are prohibited from using their renewal funds for over-leasing, which is defined as, “unit months leased in excess of unit months available for authorized baseline vouchers as of the **end of calendar year 2005.**” They were also warned, “Any ACC reserves are subject to recapture at any time by HUD,” and the Department will comply with Congress’ instruction to reduce PHA program reserves to one week.

The statutory language in the 2005 omnibus appropriations bill supercedes provisions of 24 CFR 982.102 related to:

“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.”

The notice does not apply to the Section 8 Moderate Rehabilitation Program, and Moving- to-Work PHAs “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.”

The contact for questions about this notice is the Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, at (202) 708-2934.

Interested members may read the notice in its entirety at <http://www.hud.gov/offices/pih/pihnotice.pdf>.