

Housing Resource Newsletter

from Nan McKay & Associates



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QUOTE OF THE MONTH

“It is well to remember that the entire universe, with one trifling exception, is composed of others.”

— JOHN ANDREW HOLMES

From Our E-Mail Bag

On March 27, the Department of Housing and Urban Development (HUD) delayed the effective date of the January 27 final rule "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs." In the announcement of the delay, HUD promised to respond "in a subsequent publication" to comments on the final rule that it received after the rule was published. We hope that it will do so before September 30, when the rule is scheduled to take effect.

The seams on our e-mail bag are beginning to burst again, so this month we're going to relieve the pressure by sharing the answers to some of the many questions that you've been sending us.

We've said it before, but we'll say it again: Your questions keep us on our toes and remind us how challenging it can be to apply apparently simple HUD regulations to complex real-life situations. So please keep them coming—and thank you for taking the time to write!

MILITARY PERSONNEL ON THE WAITING LIST

QUESTION We have an applicant at the top of our waiting list who is serving in the military in a foreign country. Has HUD's Office of Public and Indian Housing (PIH) issued any guidance on how we should handle this situation?

ANSWER Shortly before the beginning of the Iraq war, the PIH office issued Notice PIH 2003-5 on the deployment of military personnel to the Persian Gulf region. This notice doesn't provide any specific guidance on the issue you're raising, but it does encourage PHAs to support military families by being "as lenient as responsibly possible" in enforcing their policies.

So if you have policies that would compel you to remove the applicant's name from your waiting list, you could waive those policies and allow the applicant to remain at the top of the list for a specified length of time or until a specified event occurs (e.g., the applicant returns from service or asks to be removed from the list). However, you would not be required to do so.

By the way, someone else wrote recently looking for HUD guidance on excluding military pay during wartime. We're not aware of any such guidance, but Notice PIH 2003-5 does include a reminder that "the special pay to a family member serving in the armed forces who is exposed to hostile fire" is specifically excluded from annual income under 24 CFR 5.609(c)(7). Other special pay, regular pay, and allowances (such as for housing and uniforms) received by a family member serving in the armed forces must be included in annual income under 24 CFR 5.609(b)(8).

From Our E-Mail Bag

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You may e-mail questions related to income integrity and the Enterprise Income Verification (EIV) system to PIH.RHIIP.TA@hud.gov. If you do so, be sure to send a copy of your e-mail to your HUD field office.

Have you signed up for the PIH office's Rental Housing Integrity Improvement Project (RHIIP) mailing list yet? If not, click [here](#) and sign up now. When you get your confirmation e-mail, PIH recommends that you reply by typing "OK" rather than clicking on the link provided because sometimes the link does not work.

ENLISTMENT BONUSES

QUESTION The military sometimes gives bonuses to encourage people to enlist in the armed forces. Since these bonuses are received in a lump sum, should they be excluded from annual income?

ANSWER HUD has not provided an explicit answer to this question, so we decided to ask PIH.RHIIP.TA@hud.gov. Here's the response we got from Nicole Faison, director of the Office of Public Housing Programs:

Bonuses are not excluded income. 24 CFR 5.609(b)(1) specifically requires them to be counted. Lump sum additions referenced at 24 CFR 5.609(c)(3) refer to inheritances, insurance payouts, worker's comp, etc. There is no stretching of this provision to include bonuses, which are specifically counted. The fact that the bonus is associated with military enlistment is irrelevant. A bonus is a bonus no matter where it originates.

This is the general answer. Remember, though, that annual income is defined as "anticipated" income. If a family receives an unanticipated enlistment bonus between annual reexams, whether or not you adjust the family's income and rent to include the bonus will depend on your interim reporting policies.

EXCESSIVE COST BURDEN AS A PREFERENCE

QUESTION We have two applicants to our public housing program who are asking for a preference because they are currently paying more than 50 percent of their income for rent. Does this apply to home buyers with a mortgage as well as to renters? And are the costs of utilities counted as well? One applicant owns a mobile home but rents the land it is on. If we count the rent and his utilities, he would be eligible. The other applicant has a first and second mortgage on the same house, and the two payments exceed 50 percent of the family's income.

Any assistance would be appreciated.

ANSWER A preference for families paying more than 50 percent of monthly adjusted income for shelter is a former federal preference. Like other federal preferences, it was repealed by the

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From pages 33–34 of the [Public Housing Occupancy Guidebook](#): “The local preferences a PHA uses . . . must be related to the statement of housing needs in its annual plan. New or revised local preferences require a change by board resolution to the admissions and continued occupancy policy (ACOP) and are adopted as part of the annual PHA plan process or the PHA plan significant amendment process. The preferences adopted must be consistent with all laws relating to civil rights. PHAs must inform applicants of duly adopted preferences so applicants may demonstrate their qualification.”

Quality Housing and Work Responsibility Act of 1998. PHAs are permitted to adopt as local preferences any of the former federal preferences. However, they are not required to do so.

Any preferences that your agency has adopted for the public housing program should be described in your admissions and continued occupancy policy (ACOP). So check your ACOP. If you have not adopted excessive cost burden as a local preference, you may not grant this preference to any applicants until you do. If you have adopted such a preference, your ACOP should spell out precisely how an applicant would qualify for it.

You’ll find additional information about preferences on pages 33–38 of the [Public Housing Occupancy Guidebook](#). The former federal preferences are discussed on page 36.

APPLICANTS WHO ARE VICTIMS OF FORECLOSURE

QUESTION Because of the foreclosure crisis, which has hit our area hard, several questions have come up that we’ve never had to address before. Here are the situations:

- We have an applicant that applied in February 2003. Credit reports are showing that the address where she lived when she applied was under a mortgage starting in 2002. We recently contacted her to determine eligibility. During the six years that she was on the waiting list, she moved to an apartment and let the house go under foreclosure. Did the fact that she owned the house at the time that she applied for assistance disqualify her? In other words, are homeowners restricted from applying for assistance under the [housing choice voucher \(HCV\) program](#)?
- Another applicant was living in her mother’s house when she applied and then inherited the house after her mother passed away in 2006. The applicant continued to use her mother’s address to remain on our waiting list. She has submitted documents showing the mortgage in her name and a home equity loan on the house still in her mother’s name. The applicant is six months behind on the equity loan and three months behind on the mortgage payments.

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You'll find the regulatory definition of net family assets at [24 CFR 5.603\(b\)](#).

PHAs are required under 24 CFR [982.516\(a\)\(2\)](#) and [960.259\(c\)\(1\)](#) to "obtain and document in the tenant file third-party verification of . . . the value of assets." However, it's not the value of assets that is included in annual income. It's the actual or imputed income that can be anticipated from assets.

We have several questions in this case: Can a homeowner just walk away from her debt and receive Section 8 assistance? If so, do we count the value of the home in her annual income? If so, how do we calculate it?

ANSWER The answer to your first question is no. The same eligibility criteria apply to all applicants. From the facts you provide, the applicant had already lost her house to foreclosure before you selected her off your waiting list. If that's the case, when you're calculating her annual income to determine whether she is income eligible for the HCV program, you will ignore the property altogether. It is no longer her asset, and by the regulatory definition of *net family assets*, properties lost in foreclosure are not considered assets disposed of for less than fair market value.

As for your second scenario, there is nothing in the voucher program rules that would disqualify victims of the foreclosure crisis from obtaining federal rental assistance, even if they walk away from their debt. In this particular case, the first thing you need to do is confirm that the applicant is the legal owner of her mother's house. If she is the current owner of record, then you will need to consider the house her asset when you're determining her annual income.

Ordinarily, calculating the impact of real property on a family's annual income is time-consuming. In this case, you will save yourself some trouble if you can verify two facts suggested by your question: (1) that the applicant has no equity in the property and (2) that she does, indeed, plan to allow the house to go into foreclosure. If she has no equity in the house—in other words, if she owes at least as much on the house as it is worth in the current market—then the house has no cash value to her, and so no asset income can be imputed to it. And if she's not planning to keep the house and rent it out, then it won't generate any actual asset income, either. So the house will have no impact at all on her annual income.

ZERO INCOME TENANTS

QUESTION Are we required to conduct interim reexaminations of public housing tenants that report no income? If so, how

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You'll find the "Zero Income Checklist and Worksheet" in Appendix VIII of the [Public Housing Occupancy Guidebook](#) (see pages 352–356).

This excerpt is from page 88 of the [Public Housing Occupancy Guidebook](#).

The regulation at [24 CFR 5.609\(b\)\(7\)](#) requires "regular contributions or gifts received from organizations or from persons not residing in the dwelling" to be included in annual income. Such contributions or gifts may be monetary or nonmonetary.

often are we required to conduct them? And do we need to use the "Zero Income Checklist and Worksheet" in the [Public Housing Occupancy Guidebook](#)?

ANSWER HUD does not mandate interim reexaminations for zero income tenants, but it does recommend that PHAs adopt policies requiring them. As the [Public Housing Occupancy Guidebook](#) points out, it's simply not credible for a family to claim to have no income for a substantial amount of time unless the family has a very simple lifestyle.

When a resident (or applicant) reports zero income, well-managed PHAs make an appointment and visit the resident in their unit to determine the likelihood of the tenant's report. If the resident has a car, a telephone, cable television, Internet service, smokes, or has other evidence of some form of income, the resident should be asked about the source of income supporting cash expenditures when zero income is reported.

In some cases, the cash expenditures can be readily explained by the presence of excluded income, such as state payments for foster children cared for by the resident. If there is no excluded income, however, the PHA must determine how the resident is maintaining the observed lifestyle in the absence of income.

Regular contributions (including noncash contributions) to the household must be considered income if they are not for medical expenses. For example, if someone who is not a household member pays the telephone bill or car payment every month or buys gas, tires, and insurance for the car, these contributions would be considered income for the purposes of the public housing program.

What should your policies on zero income tenants say? That's up to you, but we recommend that you base your policies on available HUD guidance. In this case, the sample ACOP in the [Public Housing Occupancy Guidebook](#) provides you with two model policies that you can adopt or modify as you see fit, one for applicants and one for tenants:

Applicants reporting zero income will be asked to complete a family expense form to document how much

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You'll find these sample policies in [Appendix III of the Public Housing Occupancy Guidebook](#) (see pages 254 and 272, respectively).

Because of the downturn in the nation's economy, many PHAs are having trouble making ends meet in the HCV program. On June 30, the PIH office aired a Webcast on financial management of the program. You'll find a link to the Webcast on [this page](#) in HUD's [Webcast archive](#). The slides shown and examples discussed during the Webcast are posted on the [HCV home page](#). PIH provided guidance on cost reduction in [Notices PIH 2005-9](#) and [2006-32](#).

they spend on: food, transportation, health care, child care, debts, household items, etc., and what the source of income is for these expenses.

Zero Income Families: Unless the family has income that is excluded for rent computation, families reporting zero income will have their circumstances examined every 60 days until they have a stable income. Monetary or nonmonetary contributions from persons not residing in the dwelling unit for any purpose other than the payment or reimbursement of medical expenses shall be considered income.

As for the zero income checklist in the *Public Housing Occupancy Guidebook*, you may use it if you wish, but you are not required to do so. You might find that a shorter checklist works better for you. If so, you can either create your own or modify the one in the guidebook.

MAKING ENDS MEET IN THE HCV PROGRAM

QUESTION To make our limited budget authority for the voucher program stretch as far as possible, we're thinking of issuing vouchers only to applicants on our waiting list who need an efficiency or one-bedroom apartment. Is this acceptable?

ANSWER No. In effect, you would be selecting applicants on the basis of family size, and doing so is strictly prohibited under voucher program rules on waiting list administration. The pertinent regulation is [24 CFR 982.204\(d\)](#):

(d) *Family size.* (1) The order of admission from the waiting list may not be based on family size, or on the family unit size for which the family qualifies under the PHA occupancy policy.

(2) If the PHA does not have sufficient funds to subsidize the family unit size of the family at the top of the waiting list, the PHA may not skip the top family to admit an applicant with a smaller family unit size. Instead, the family at the top of the waiting list will be admitted when sufficient funds are available.

If you need to reduce your voucher program costs, we strongly recommend that you watch HUD's June 30 Webcast on financial

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A revision of [Notice PIH 2005-9](#) is under way and should be published soon.

According to [Chapter 12 of the Housing Choice Voucher Program Guidebook](#), only factors that have changed need to be verified at an interim reexamination (see [page 12-10](#)).

If you have a question that you would like to see answered in [NMA's "Housing Resource Newsletter,"](#) please e-mail it to [Diane Sterling](#).

management for calendar year 2009 and that you review Notices PIH [2005-9](#) and [2006-32](#), which provide guidance on how to cut costs in the HCV program.

IMPLEMENTING REDUCED PAYMENT STANDARDS EARLY

QUESTION We're having a disagreement that we hope you can help us with. Our agency is currently in the process of requesting a waiver to [24 CFR 982.505\(c\)\(3\)](#), which would allow us to make an across-the-board reduction in our HCV payment standards as of October 1 (instead of at each participant's second annual recertification following the reduction). While it will obviously be necessary to process interim changes in each instance, would doing so necessarily require each participant to come into our office for a face-to-face full recertification?

In other circumstances, when a participant reports a change of some kind that triggers the need for an interim, the change is verified, but we have never seen it as a requirement to insist that the participant actually come into our office and be questioned on the status of other matters (income, family composition, etc.) on which no changes were being reported. If we are correct in not requiring this to be done, why then would it be necessary in a scenario where the only change is the change in the payment standards?

ANSWER We don't think it would be necessary. HUD does not prescribe how interim reexaminations are to be conducted in the voucher program. In fact, the regulation at [24 CFR 982.516\(b\)](#) specifies that "interim examinations must be conducted in accordance with policies in the PHA administrative plan." So if, as you suggest, your administrative plan does not call for full face-to-face recertifications for other interims, you do not have to conduct them when you implement your new payment standards between annual reexams (assuming, of course, that you get a waiver to do so). Just be sure that you comply with the policies in your administrative plan on providing notice of changes in housing assistance payments to families and owners. Your policies should be in accordance with state and local laws regarding notice of rent increases. ■