



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

Special Attention:

Public Housing Agencies (PHA)
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

NOTICE PIH-2012-14 (HA)

Issued: February 24, 2012

This notice remains in effect until
amended, superseded, or rescinded

Subject: Guidance on Public Housing salary restrictions in HUD's Federal Fiscal Year (FFY) 2012 Appropriations Act (P.L. 112-55)

1. Purpose

This notice provides guidance on implementing the provision in HUD's FFY 2012 Appropriations, P.L. 112-55, that limits the use of FFY 2012 Section 8 Tenant-Based Rental Assistance and Section 9 appropriations to pay salaries to public housing agency (PHA) employees. This limitation applies to all PHA employees, including chief executive officers, other officials, and any other employees.

2. Applicability

This notice applies to all PHAs, including low rent only, Section 8 only and Moving to Work (MTW) PHAs that:

- (1) receive FFY 2012 appropriations for one or more of the following programs during their 2012 fiscal year (FY): Section 8 (Housing Choice Vouchers (HCV)), Section 9 Capital Fund, and Section 9 Operating Fund; and
- (2) pay any annual salary to a covered individual (as defined in Paragraph 4, Section B) during the PHA's 2012 FY that exceeds \$155,500.

3. Background

Administrative provision Section 234(a) of title II of Division C of HUD's FFY 2012 Appropriations (P.L. 112-55) restricts the use of Federal funds to pay the salaries of PHA employees. This section provides:

None of the funds made available by this Act for purposes authorized under section 8 (only with respect to the tenant-based rental assistance program) and section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) may

be used by any public housing agency for any amount of salary, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule at any time during any public housing agency fiscal year 2012.

Section 234(b) provides that this restriction takes effect 120 days from the enactment of the appropriations. As HUD's FFY 2012 appropriations were enacted on November 18, 2011, the effective date of this salary payment limitation is March 17, 2012.

4. Implementation

Beginning on March 17, 2012, and continuing for the duration of the PHA's FY 2012, no PHA may use 2012 appropriations funding for Section 8 HCV administrative fees or Section 9 Capital Fund or Operating Fund to pay any amount of salary to the PHA chief executive officer or other officials or employees that exceeds \$155,500, the current level IV Executive Schedule salary.

To fulfill its obligations under the Act, each PHA must compute the amount of impacted salary for each covered individual during the PHA's FY 2012. For each employee whose salary exceeds \$155,500, the PHA must ensure that amounts in excess of the congressional limitation are not paid from FY 2012 Section 8 or Section 9 funds.

This will depend on a number of factors that will vary by PHA and covered individual, including the beginning and end dates of the PHA's fiscal year, the amount of the covered individual's salary, and the amount of salary that has been paid and remains due as of March 17, 2012. Each PHA must undertake these computations and determine what action is appropriate to comply with the Act. The following information is provided to assist the PHA in fulfilling this mandate.

A. Applicable funds:

None of the funds originating from Section 8 or Section 9 sources may be used to pay the salary of an individual at a rate in excess of the applicable salary limitation. This includes PHAs that have implemented Asset Management and collect certain fees from property-level funding that may be attributable to Section 8 (HCV) or Section 9 funding. It is the effect of Congress' mandate that any fees collected by a PHA that originate from FFY 2012 funding for Section 8 (HCV) or Section 9 remain subject to this limitation and count toward the amounts limited by Section 234 during the PHA's 2012 fiscal year.

Any funds remaining from previous fiscal years (e.g., FY 2011, FY 2010, etc.) are not impacted by the FY 2012 salary limitation. Carrying over previous years' funds or using other unrestricted funds to support salaries will remain at the PHA's discretion, according to appropriate eligibility restrictions and other applicable requirements.

Please note that all eligibility restrictions for Section 8, Section 9, and other funds continue to apply. Section 8 HCV HAP funds may never be used for administrative expenses such as PHA employee salaries, regardless of the amount of the salary, the year of the appropriations, or where we are in the PHA fiscal year. This same rule applies to HAP renewals, new vouchers, and HAP funds in the PHA's net restricted asset (NRA) account.

B. Covered individuals:

For purposes of this Notice and under the Act, the term "covered individuals" includes the "chief executive officer" as well as any other official or employee of the PHA with an annual salary greater than \$155,500. The term "chief executive officer" includes the chief operating officer, the executive director, or other similarly titled individuals.

The phrase "other official or employee" includes all officials or employees of the PHA within the ordinary understanding of those terms.

For PHAs that are divisions or departments of another entity such as a state, county, locality, or non-profit that administers the federal Section 8 or 9 programs and receives federal funds under Section 8 or 9, the term chief executive officer includes similarly titled individuals at the PHA who are employees of that other entity.

The term covered individuals includes persons who are employed in a legally separate entity of the PHA but are reported in the PHA's financial statement as a component unit in accordance with applicable accounting standards.

The term covered individuals does not include persons who work on an hourly basis, as needed, and are paid an hourly rate.

PHAs must determine on a case-by-case basis whether or not an individual providing services under a contract or other agreement is a covered individual. The determination of whether such an individual is an independent contractor or an employee depends on the relationship between the PHA and the individual, not on the name on the contract or agreement. Guidance for making this determination is provided by the Internal Revenue Service at www.irs.gov.

C. Annual salary:

Under this Notice and the Act, "salary" does not include bonuses and overtime nor does it include benefits such as retirement, life insurance, medical insurance, or the use of a PHA vehicle. The term salary includes payments to all covered individuals who are paid on an annual basis. It also includes, for example, situations where multiple PHAs collectively hire one person for an annual amount under a single agreement.

Further, for purposes of this Notice and the Act, salary is the amount the PHA pays to an individual during the PHA's 2012 fiscal year. For example, the amount of salary for all

covered individuals at a PHA with a FYE June 30, 2012, will be calculated on the basis of salary payments made from July 1, 2011, through June 30, 2012.

D. Time frame:

The salary limitation imposed by Section 234 of the Appropriations Act becomes effective on March 17, 2012, and remains in effect with respect to FFY 2012 funds for each day remaining in a PHA's 2012 FY. Because PHAs operate on different fiscal year schedules, each PHA must calculate the effective dates and impacted payments individually.

5. Monitoring and Audits

HUD expects each PHA to comply fully with the letter and intent of the salary limitation provision. HUD is currently finalizing updates to the 2012 OMB A-133 Compliance Supplement, and expects that PHA auditors will perform compliance testing for this provision.

PHAs should calculate excess salary reasonably and should document that calculation so that, upon an audit, the PHA can explain how each employee's salary exceeding \$155,500 was funded and prove to the auditor that there was no improper use of FFY 2012 Section 8 or Section 9 monies to fund excess PHA 2012 FY salary payments.

6. Questions

For further information about this notice, PHAs may contact the Technical Assistance Center (TAC) at 1-888-245-4860. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

/s/

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