

Possible PHA Strategies to Respond to a Funding Shortfall in the in the Regular Tenant-Based Voucher Program for 2013

Due to the level of congressional appropriations provided for FY 2013 after sequestration, most PHAs will receive less funds from HUD in 2013 than they need to meet the costs of the current number of authorized vouchers in use and a substantial cut in their administrative fees. Most PHAs are acting to address the funding shortfalls.

Many PHAs are acting too quickly and have failed to determine if they have sufficient funding for the remainder of the calendar year, including program or administrative reserves, and without fully accounting for the expected turnover of vouchers at the local level. For most PHAs, the PHA's reserves as of June 2012 are listed at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/psd (Scroll to the very end to find the figures.)

For the voucher program, PHAs are funded on a calendar year not the federal fiscal year. A PHA's annual funding for 2013 will be based upon authorized vouchers in use for the prior calendar year, times the average per voucher cost plus an annual adjustment, plus an adjustment for new vouchers in use only for part of the year. A PHA's allocation is rebenchmarked annually. Because Congress did not finalize funding for the voucher program until the end of March, HUD has not yet notified PHAs of their final allocation for 2013, which it must do by late May. By letter dated March 21st, HUD notified PHAs how to estimate their 2013 renewal funding.

There are a variety of strategies that a PHA may adopt to address funding shortfalls. The list below is ranked in four categories. "Best" responses are those that will advance program goals of paying reasonable rents and enhancing housing choice while providing decent quality, affordable housing to the maximum number of authorized families. Responses that would cause "minimal," "moderate" and "severe" harm are those that undermine one or more of these goals. Some of the "cons" identified below include that the implementation is staff-intensive. Because PHAs' administrative fees are funded at 70% of the formula need for 2013, any such policy may be less attractive.

Also note that this chart is focused on regular tenant-based vouchers. Different considerations apply to project-based vouchers (PBV), Enhanced Vouchers and VASH vouchers. For example, PBVs are controlled by the contract between the PHA and the owner and thus any decrease in the payment standard would not affect the subsidy paid for the PBV units. Enhanced vouchers are designed so that if the tenant stays in the development that was formerly HUD-subsidized or assisted under project-based Section 8, the payment standard should cover the full contract rent, if deemed reasonable by the PHA, hence general adjustments to the payment standard should not affect those residents. 42 U.S.C. 1437f(t); PIH 2001-41 and PIH 2005-24. Funding for VASH vouchers is not subject to sequestration.

I. Best Responses	Savings Potential	Legality	Pros	Cons
1. Aggressive rent reasonableness – individual unit determinations	Depends on degree of improvement possible. May reduce rents during lease term.	Yes (see 24 CFR 982.507 and PIH Notice 2011-28, ¶ 4b.)	No shift in rent burden to tenants; no mid-term termination of contracts	If overdone could cause owners to opt out; staff intensive (though could prioritize units with highest rents)
1a. Across the board rent reasonableness reductions	Depending on % reduction could be fairly substantial	More likely if based on some data and rebuttable by owners.	Same, and much less staff time required	More risk of owner opt-out

2. More accurate income/tenant payment determinations	Probably slim	yes	Helps PHA on SEMAP reviews; increases program credibility	Time-consuming; could result in adverse actions for some tenants
3. Voluntary rent reductions by owners	Depends on % that agree; will have more potential in many agencies than #1.	Yes. See PIH Notice <i>Id.</i>	No shift in rent burden to tenants; no mid-term termination of contracts	If overdone could cause owners to opt out; some administrative burden
4. Ask HUD to order a jurisdiction that bills and has substantial reserves and/or high turnover to absorb another PHA's portables	Depends on share of vouchers under portability billing	See 982.355(d)(2), (f)(4), but HUD suggests that PHAs stop absorbing. PIH Notice 2011-28, ¶ 4d	No adverse consequences for participants. May be a tool for avoiding terminations at a PHA with limited or no reserves and inadequate turnover.	HUD most likely will not approve a general request but may be sympathetic to avoid terminations.
5. Increased HQS enforcement	Depends on circumstances: savings result from suspending HAP for violations	Yes: 24 CFR 982.404(a)(2)	Improved housing conditions	Could increase evictions or force tenants to move; may force landlords out of program; staff intensive
6. Apply utility allowance (UA) for family based upon family unit size not the size of apartment that tenant rented	Savings if families are renting units larger than they are eligible for under subsidy standard CBO estimates that 300,000 families are in this category	Yes with HUD waiver: PIH Notice 2011-28, ¶ 4.k	Arguably fair to base UA on family size for all	It will adversely affect some tenants. PHA must seek a waiver of 24 CFR § 982.517(d)(1)
7. Administrative efficiencies	Depends on circumstances and number of families affected. Most Admin. savings do not result in HAP savings.	Yes:	Helps all PHAs as their admin. fees are currently funded at 70% of the formula. Will also help in long-run. Unused admin. fees can be used to make HAPs.	For some administrative efficiencies PHA must request HUD approval and/or amend PHA Plan or Admin. Plan.
_a Do not require verification of tenant income that is wholly excluded	Same	Yes; PIH Notice 2013-4, ¶ 4	May benefit tenants as rent recertification is not delayed	May require change in Administrative Plan; not required to notify HUD of the change
_b Tenant may self-certify assets if less than \$5000	Same	Yes; PIH Notice 2013-3, ¶ 3.	Same	Must notify HUD and change Administrative Plan
_c Allow streamlined verification of 100% fixed income families	Same	<i>Id.</i>	Same	Same

<p>_d PHA may establish payment standard at 120% of FMR without HUD waiver for individuals with disabilities as a reasonable accommodation</p>		<p><i>Id.</i></p>	<p>Will save the staff time required to seek a waiver and benefit tenant seeking reasonable accommodation</p>	<p>Same</p>
<p>_e Base tenant income on most recent 12 months in EIV</p>	<p>Depends most likely will be an administrative savings but not a savings of HAP funds</p>	<p><i>Id.</i> Note that PHAs must use more recent income information at tenant's request based on change in circumstances</p>	<p>Tenant does not have to supply 3rd party verification, as PHA relies upon EIV; but if circumstances change 3rd party verification is necessary</p>	<p>Same. May be more costly to PHA HAP account if tenants' incomes are rising as tenant share determined retrospectively will be lower</p>
<p>_f Restrict moves within any one-year period.</p>	<p>Will reduce administrative costs, but likely no HAP savings</p>	<p>Yes; 24 CFR 982.314(c)(2)PIH Notice 2012-42, ¶ 13</p>		<p>May require change in Admin. Plan. Interferes with ability to move with voucher.</p>

II. Responses that Cause Minimal Harm	Savings Potential	Legality	Pros	Cons
1. No delay in rent recertification when tenant income increases	Small (?) and only for agencies that now delay	Yes — option now		More staff time
2. No new FSS enrollees	? — depends on what PHA would otherwise have allowed	Depends on whether PHA meets mandatory level (but waiver likely)	Saves staff time	Reduces self-sufficiency efforts and tenant savings
3. No “moving” vouchers for families in project-based voucher units	Seems no HAP savings unless don’t honor project-based contract; small admin savings	Illegal if other vouchers being issued. 24 CFR 983.260		
4. No rent increases for units of tenants staying in-place, regardless of whether rent increase requested is reasonable.	Moderate [?]	Illegal. Lease Addendum and HAP contract say rent <i>shall not exceed</i> reasonable rent. A PHA may not “freeze” rents, if requested rent is reasonable. PIH Notice 2011-28, ¶ 4b. But no known landlord legal challenge.	Simple to administer; no direct rent shift to tenants	In rising rent market may increase owner opt-outs and generally undermine confidence in program. PHAs may be able to minimize harm through good outreach.

III. Responses that Cause Moderate Harm	Savings Potential	Legality	Pros	Cons
1. Increase minimum rent	Depends on how many families paying less and likely hardship exceptions	Yes, up to \$50/month		Hurts poorest families; tenant exception requests could be time-consuming
2. Strict enforcement of (or changes to) occupancy standards on unit size	Depends on how much of a change from current agency policy. Implementation allowed at family's first regular reexamination. 24 CFR 982.505(c)(5).	Yes, so long as allows "at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room. See 24 CFR 982.401(d); PIH 2011-28, ¶ 4i; <i>See also</i> Memo from Chung-yiu "Andrew" Lee, HUD OGC to Lauren Rawson, HUD, Office of Voucher Management Operations, RE: S. Jersey Legal Services Inc. (June 25, 2013)		Substantial rent increase for the affected family. Larger families may have more trouble finding willing landlord due to restricted BR size of voucher. May impair family dynamics. If family is not given prior notice, it may be very difficult to move on short notice
3. Adjust preferences to admit no more than 75% and highest income ELI households	Modest and only affects new admissions	Yes (assuming no problem posed by Con Plan). 24 CFR 91.205 and 91.215		Hurt homeless and other extremely poor applicants
4. Reducing or temporarily suspending payments to owners (w/o rent reas.)	Significant (but may impact future funding if suspending payments reduces determination of "units leased" and reduces average costs per unit)	No. See HUD's 6/14/04 webcast powerpoint, slides 55 and 56.*		Likely landlord opt-outs. PHA may be liable for penalty for late payments if suspend. 24 CFR 982.451(b)(5)
5. No moves except to same or lower rent units	Depends on program size and types of moves	No. If the tenant move is involuntary, such as due to suspension for HQS violations or nonrenewal of lease. Yes . If move is voluntary and PHA lacks funds, HUD regs allow denial of moves to higher cost units under certain circumstances and PHA notifies HUD field office. See	Probably affects few tenants and no owners	Contrary to purpose of program; could interfere substantially with families' lives

		982.314(e)(1); PIH Notice 2011-28, ¶ 4e and Notice 2012-42, ¶13.		
6. No portability (or only if not more costly or if receiving PHA absorbs)	Similar to above	If lack of funds, PHA may deny portability if notify HUD field office and if higher subsidy standard or payment standard. 24 CFR 982. 355(e)(6), PIH 2012-42, ¶13	Same	Same
7. No increase in utility allowance (UA)	Only saves money to extent gross rents currently below payment standard.	Depends on data. PIH Notice 2011-28, ¶ 4d (PHA may always review and implement immediately if UA is too high). No current PIH notices authorize a waiver of the rule that must change UA if there is an 10% increase in rates and such waiver may violate statute.		Higher actual tenant payments
8. No FSS escrow deposits	Depends on # of families	No. See HUD's 6/14/04 powerpoint, slide 56*	May make up payments later	Undermines PHA commitments

*HUD, Housing Choice Voucher Program FY 2004 Appropriations Implementation, June 14, 2004 broadcast powerpoint, available at <http://nhlp.org/resourcecenter?tid=124> (materials).

IV. Responses that Cause Severe Harm**	Savings Potential	Legality	Pros	Cons
1. Reduce # served by a. not issuing unused authorized vouchers (on turnover)	Substantial	Yes	Easier to reverse than many other policy changes; saves staff time	Hurts applicants at top of list and social service programs that rely on availability of vouchers. Could lock in lower maximum number of vouchers. Hard to make visible.
_b. by more aggressive fault terminations	Substantial	PIH Notice 2011-28, ¶ 4a and depends on grounds and process used		Also hurts families terminated; because formerly would have worked out problems; may be seen as arbitrary or unfair; staff intensive
_c. by also freezing vouchers of searchers	Substantial	Yes	Easier to reverse than many other policy changes.	Also hurts affected families. Bad publicity for agency (though helps make harm visible).
_d. by denying all moving vouchers	Depends upon number of requests and whether some families leave program as result.	No. See III (5) and (6); cannot deny right to move for insufficient funding if move is involuntary or due to domestic violence PIH Notice 2012-42, ¶13.		Unfair impact on families needing to move; contrary to the purposes of the program. See III (5) and (6).
2. Decrease payment standards	Substantial, if combined with a waiver to permit immediate implementation. If no waiver, savings increase with time, depending on % of rents above new payment standard and amount of moves/new participants	Yes PHA may reduce payment standard within range of 90-110% of FMR. 24 CFR 982.503(d) (applies immediately for new participants and movers, and stayers with a new contract. PIH Notice 2011-28.) For all others, the decrease takes effect after 2 nd annual redetermination) 24	Good only if really were too high (so may be better if done only for some neighborhoods or BR sizes).	Shifts rent burdens to tenants; undermines choice and deconcentration; could hurt utilization and success (esp. for lowest income). PHAs appear to like this response as it is easier to determine the savings.

		CFR 982.505(c)(3). Must get HUD approval for standard below 90%. If below 90%, must examine whether likely to result in more than 40% of families paying more than 30%. But PHAs have requested and HUD has granted waivers of the effective date of the increase and of the 40% rule. PIH 2011-28, ¶ 4j; cf 42 USC 1437f(o)(1)(E) Must apply to all households of same size in particular area, regardless of family type.		
3. Terminate some or all HAP contracts with owners and reoffer at lower payment standard	Substantial, depending on amount of payment standard reduction	Probably illegal (unless HUD changes reg); some argue within PHA discretion if funding inadequate. 24 CFR 982.309, 982.454; HAP contract, ¶ 4b.	Shares pain; May maintain number of vouchers in use (depending on owner opt-outs and tenants' ability to find new units)	Shifts rent burdens to tenants; Some owners will terminate and displaced families may not find other units; Undermines owner confidence. Requires HUD notification and policy must be in Admin Plan. PIH 2011-28, ¶5.
4. Terminate a small % of current participants	Substantial. Most savings if terminate poorest families with least ability to afford rent;	Yes (if PHA has insufficient reserves to cover funding shortfall and PHA adopts criteria properly). PHAs must notify HUD field office before issuing notices of termination. PIH Notice 2011-28, ¶ 5. In 2013, Congress said set-aside funds to could be used to prevent voucher terminations.	Very visible. Fewer owners affected.	Risk of homelessness etc. to families affected. Could mitigate harm somewhat if offer public housing units. Undermines confidence in reliability of funding.

** The entire chart is organized by degree of harm to residents and to the policies and goals of the voucher program from section I “Best Responses” to section VI “Responses that Cause the Greatest Harm.” In addition within this section IV, the severity of harm for tenants increases as one reads down the chart.