



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

Special Attention of:
Regional Directors: State and Area
Coordinators; Public Housing HUB Directors;
Program Center Coordinators;
Public Housing Agencies

Notice PIH 2011-33

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Expires: Effective until Amended,
Superseded or Rescinded

Cross References: PIH 2009-48

Subject: Use of Work Preferences as a Public Housing Waiting List Management Tool and as a Lease Provision for Certain Public Housing Buildings

- I. **Purpose.** This notice clarifies program policy related to establishing local preferences, the use of work preferences as a public housing waiting list management tool, and the inclusion of work activities in house rules and as a lease provision for certain public housing buildings. The purpose of this notice is to ensure that eligible households have full and equal access to the public housing program and that local preferences are implemented in a manner that is consistent with statutory and regulatory requirements.

- II. **Applicability.** This Notice applies to all Public Housing Agencies (PHAs) and localities that operate a public housing program. Moving-To-Work (MTW) agencies are excluded from the provisions of this notice.

- III. **Permissibility of Local Preferences.** A local preference is a tool that can be used to prioritize eligible households for placement on a housing authority's waiting list for both the Public Housing and Housing Choice Voucher programs. A PHA may adopt a system of local preferences to order the selection of families admitted to the PHA's Public Housing program (24 CFR §960.206). These preferences must be based on local housing needs and priorities, as determined by the PHA.

The PHA must inform all applicants about local preferences and must give applicants an opportunity to show that they qualify for available preferences. For PHAs required to submit an annual plan, all waiting list procedures must be provided in the plan, and resident and other community input must be sought prior to implementation.

- IV. Work Preferences.** As part of its system of local preferences, PHAs may implement a preference for the admission of working families (families where the head, spouse or sole member is employed). An applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities (24 CFR §960.206(b)(2)). A PHA's system of local preferences must be included in its Annual Plan (24 CFR §903.7(b)) and Admissions and Continued Occupancy Policy (ACOP). Any work preference adopted must be in accordance with the non-discrimination and equal opportunity requirements listed in 24 CFR 5.105(a). See section VI of this Notice for further discussion of this requirement.

The Department also encourages PHAs, consistent with standards for the Community Service and Self Sufficiency Requirement (CSSR), to provide the benefit of the working preference for a head of household who is the primary caregiver for a disabled household member, or is receiving assistance, benefits or services under a State program funded under Part A of Title IV of the Social Security Act (42 U.S.C. 601) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program, and has not been found to be in noncompliance with such a program (24 CFR §960.601).

A PHA may establish a work preference on a PHA-wide basis or as a site-based waiting list preference. In either case, a PHA may not require a person to be working in order to be placed on a waiting list. Where work preferences are implemented in conjunction with a site-based waiting list, PHAs are reminded of their obligation to disclose to each applicant any option available regarding the selection of the development in which to reside. This includes basic information about development sites and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different size and types at each development (24 CFR §903.7(b)(2)(ii)). Additionally, where preferences are implemented on a site-based basis, a PHA must ensure reasonable steps are taken to assure that the adoption of such waiting lists is consistent with affirmatively furthering fair housing principles, such as reasonable marketing activities to attract applicants regardless of race or ethnicity, and must review its site-based waiting list policy to ensure that it is consistent with all civil rights laws (24 CFR §903.7).

- V. House Rules and Lease Provisions.** A PHA with a work preference may choose to include work activity as a condition of continued occupancy at a public housing development (24 CFR §5.603 directs PHAs to 407(d) of the Social Security Act for a definition of work activity. Also see section VI of this Notice). A work activity lease provision may include a certain number of hours per week that a person is required to engage in work activity, such as being employed, participating in training and/or pursuing education opportunities, or a being active in a self-sufficiency component. This provision must be incorporated, by reference, into a building's house rules and as a provision of the tenant lease. House rules must be publicly posted in the PHA office and be provided to applicants and tenants upon request. If the rules are

modified in any way, the PHA must give at least 30-days written notice to each affected tenant. A notification to residents must include the proposed modification and provide tenants with the opportunity to comment on the proposed changes. The PHA must take into consideration all comments received before implementing a change to house rules (24 CFR §966.5).

Where a PHA chooses to include work activity at a public housing development, as stipulated by house rules and as referenced within the lease, the language should outline all eligible work activities that qualify, as well as all other related requirements, including relevant timelines regarding gaps in employment before action is taken. All regulatory requirements related to lease provisions including tenant consultation, as stated in 24 CFR §966.3, apply.

A housing authority may operate a public housing development(s) that includes work activity as a condition of continued occupancy within the specific development. However, such a requirement of continued occupancy cannot affect all public housing developments within a PHA's portfolio.

Under no circumstance may a PHA terminate assistance from the public housing program as a consequence of unemployment, underemployment, or otherwise failing to meet the work activity requirement for a particular public housing development. Such termination of assistance cannot be provided for within house rules or as a lease provision. Underemployment in this instance is defined as being engaged in a work activity for fewer than the number of hours needed for continued occupancy. For example, a tenant's lease may require 30 hours of work activity per week. If a tenant has met this requirement by engaging in 30 hours of employment per week, but the tenant's employer reduces the tenant's hours to 20 hours per week, the tenant would need to engage in other work activity, as defined under 24 CFR §5.603, for an additional 10 hours per week in order to meet the house rules and lease provisions related to work activity.

Where a development's house rules and lease include work activity as a condition of occupancy and a tenant becomes unemployed (or underemployed) the PHA may choose to relocate affected households to another public housing unit within their jurisdiction. The alternate unit must satisfy the household's occupancy needs including being of an equivalent size and with any needed accessibility features. However, if a tenant at one of these developments becomes unemployed or underemployed as a result of becoming disabled, the tenant must be allowed to remain at the development.

A PHA should give affected households a reasonable period of time to search for new employment, enroll in a job training program or in an economic self-sufficiency program. When defining 'reasonable period of time' for this purpose, PHAs should consider local unemployment rates and the availability of both entry-level and professional employment. The PHA is also encouraged to provide social service support or case management assistance to households in order to help with their

employment search. If, after a reasonable period of time, the tenant has failed to enroll in an eligible program or to find sufficient employment, a PHA may transfer the household to an appropriate unit in another building that does not include work activity within its house rules or lease. Relocation expenses for the household's transfer must be paid by the PHA.

- VI. Defining work.** If a PHA chooses to implement a work preference, or to include work activity as a lease provision, the PHA's Plan and ACOP should include a complete description of how the preference and work activity provisions will be implemented. These documents must include a clear definition of work activity. The definition of work activity can be found in statute (42 USC 607(d)) and by reference in HUD regulations (24 CFR §5.603).

A family where the head, spouse, or sole member is employed would meet the requirement for work activity. Households where the head and spouse, or sole member is age 62 or older, or is a person with disabilities would also be eligible to reside at developments where work activity is a condition of continued occupancy. The Department also encourages PHAs, consistent with standards for the CSSR, to allow a family to reside at a development where work activity is a condition of occupancy if the head of household is the primary caregiver for a disabled household member, or is receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program, and has not been found to be in noncompliance with such a program (24 CFR §960.601).

Further, the Department defines an economic self-sufficiency program in HUD regulations (24 CFR §5.603). Under this definition, an economic self-sufficiency program is defined as any program designed to encourage, assist, train or facilitate economic independence of HUD-assisted families or to provide work for such families (24 CFR §5.603(b)). PHAs are encouraged to allow families with household members participating in such programs to qualify for a work preference and to reside in developments where work activity is a condition of continued occupancy.

- VII. Considerations When Establishing Work Preferences and Incorporating Work Activity as a Condition of Occupancy Within Certain Public Housing Buildings.** PHA adoption and implementation of a local work preference or work activity as a condition of continued occupancy is subject to HUD requirements concerning income targeting (24 CFR §960.202(b)), deconcentration and income-mixing (24 CFR §903.2).

Not less than 40 percent of the families admitted to a PHA's public housing program from the PHA waiting list during the PHA fiscal year must be extremely low income families. Local preferences must not affect this basic targeting requirement. With

limited exceptions (24 CFR §903.2) PHAs must also, in accordance with section 16(a)(3)(B) of the 1937 Act (42 USC 1437n), comply with the requirement to promote deconcentration of poverty and income mixing within public housing developments.

This requires the PHA to implement a policy or series of policies that provide for bringing higher income tenants into lower income developments and lower income tenants into higher income developments. Before implementing local work preferences, PHAs should determine the effect of such preferences on the PHA's ability to meet these statutory and regulatory requirements. The deconcentration requirement, in particular, may be difficult to satisfy after continual operation of a site-based work preference.

Additionally, tenant selection policies, including work preferences and work activity as a condition of occupancy, must be consistent with fair housing and equal opportunity provisions. All admission and occupancy policies for public housing programs must comply with civil rights requirements in 24 CFR §5.105(a), including, but not limited to, the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Title II of the American Disabilities Act of 1990; and regulations to affirmatively further fair housing. PHAs have an obligation to assess the impacts of local preferences and occupancy policies on protected classes, and to ensure that their implementation does not result in minority concentration, segregation or other discriminatory outcomes. If any local preferences or occupancy policies are found to result in discriminatory outcomes, the PHA must immediately terminate its use of the preference or policy.

For Further Information.

For further information regarding this Notice, please contact Shauna Sorrells, Director, Office of Public Housing or send an e-mail to shauna.m.sorrells@hud.gov.

/s/
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