

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4694-N-01]

Housing Choice Voucher Program: Notice of Funding Availability for Reallocated Baseline Units and Annual Budget Authority and for Reallocated Baseline Welfare to Work Units and Annual Budget Authority

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD procedures for reallocating baseline units and annual budget authority in the housing choice voucher program. The notice outlines public housing agency (PHA) eligibility criteria to apply for reallocated units and budget authority, and the semiannual invitation and application procedures. This notice also announces HUD procedures for reallocating baseline Welfare to Work units and annual budget authority. The procedures applying to Welfare to Work vouchers are discussed in section III of this notice since the reallocation process and timetable will be separate from the process for other housing choice vouchers.

FOR FURTHER INFORMATION CONTACT:

Deborah Hernandez, Section 8 Finance Division, Office of Administration and Budget, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4232, Washington, DC 20410; telephone (202) 708-2934. For further information regarding reallocation of Welfare to Work vouchers, contact Kathryn Greenspan, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4222, Washington, DC 20410; telephone (202) 708-0744. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Background

On October 21, 1999, following a negotiated rulemaking, HUD published a final rule (64 FR 56882) creating a new 24 CFR 982.102, which establishes the procedures to determine baseline unit allocations, for which HUD obligated and renews funding, for the Section 8 voucher program. The rule provides

(§ 982.102(i)) that if a PHA has performance deficiencies, such as failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. The rule provides that HUD will publish a **Federal Register** notice that describes the circumstances and procedure for reallocating budget authority.

On April 19, 2000, HUD published a **Federal Register** notice (65 FR 21088) pursuant to the final rule, which advises PHAs to ensure that they assist the number of families that equals the number of units reserved for the PHA, and to manage their lease-up and turnover to fully use annual budget authority.

The April 19, 2000 **Federal Register** notice also states that HUD will annually assess each PHA's leasing rate and use of annual budget authority to determine whether to reallocate unused baseline units and unexpended annual budget authority to other PHAs. The notice further states that HUD will issue a **Federal Register** notice outlining the criteria for determining the PHAs to receive reallocated annual budget authority. Section II of this notice announces the procedures for regular semiannual reallocation of voucher baseline units (other than Welfare to Work units) and annual budget authority. In addition, section III of this notice announces separate procedures for reallocating baseline Welfare to Work units and annual budget authority.

B. Environmental Review

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19 (c) (1), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

II. Baseline Units and Annual Budget Authority Available for Reallocation

A. Determining the Number Units Available for Reallocation

The April 19, 2000 **Federal Register** notice specifies when tenant-based baseline unit allocations become available for reallocation to other PHAs. The notice states that when HUD processes a PHA's year-end statement, it

will assess the PHA's leasing rate and rate of use of annual budget authority. If the leasing rate is less than 90 percent of the number of units reserved and the PHA has expended less than 90 percent of its annual budget authority, HUD will issue a warning to the PHA. If the PHA fails to increase its leasing rate to 95 percent of the number of units reserved by the time the PHA submits its second budget after the warning, then the unused baseline units and unexpended baseline annual budget authority is subject to reallocation.

In addition, unused baseline units and unexpended annual budget authority become available for reallocation when a PHA voluntarily decides to decrease its program size. A number of factors may cause a PHA to decide to no longer administer its full baseline unit allocation including a locally strong and tight private rental market, inadequate suitable rental stock, or insufficient voucher applicants, among other reasons. If a PHA voluntarily chooses to decrease its baseline unit allocation, those baseline units and the related annual budget authority become available for reallocation.

Baseline units and annual budget authority may also become available for reallocation in other ways, including but not limited to a HUD-directed mandatory reduction in voucher program size as a result of poor PHA performance under the Section 8 Management Assessment Program, or PHA failure to comply with the ACC. When baseline units become available for reallocation, the Department will reduce the number of baseline units for the PHA that is relinquishing the units by not renewing funding for them under the PHA's consolidated annual contributions contract (CACC).

B. Inapplicability to Voluntary Transfers of Program Administration within the Same Geographic Area

This notice does not apply to the voluntary transfer of baseline units and annual budget authority, from one PHA's CACC to another PHA's CACC, when the transfer is between PHAs within the same metropolitan area, within the same nonmetropolitan county, or within the same state where voucher program administration is voluntarily shifted from a city or county PHA to its state PHA, or from a state PHA to one or more of its county or city PHAs.

C. Semiannual Invitation to Apply for Reallocated Baseline Units and Annual Budget Authority

The HUD Office of Public and Indian Housing will post an invitation for PHAs to apply for reallocated housing choice voucher baseline units and annual budget authority during the first work week of each calendar semiannual period beginning in January 2002.

The invitation will be posted on the Internet, on the Office of Public and Indian Housing housing choice vouchers web page at: <http://www.hud.gov/offices/pih/programs/hcv>. The invitation will announce the availability of the total number of baseline units, the related annual budget authority, and the per unit annual budget authority amount, that became available to HUD for reallocation during the preceding semiannual period. The per unit annual budget authority amount for the reallocated baseline units made available under each semiannual invitation will be the average per unit annual budget authority amount for all of the units made available for reallocation and announced under that invitation.

If HUD determines there are insufficient baseline units and annual budget authority available for reallocation in any semiannual period and so an invitation is not warranted for that semiannual period, a notice will be posted to that effect on the Internet housing choice voucher page during the first workweek of the semiannual period.

D. Eligible Applicants and Application Procedures

(1) *Eligible Applicants.* Reallocated housing choice voucher baseline units and annual budget authority are available for only two groups of PHAs:

(a) PHAs that have urgent needs due to housing loss and permanent displacement arising from federally declared disasters and that have a leasing rate, or rate of use of annual budget authority, of at least 90 percent, and

(b) PHAs that have a leasing rate, or rate of use of annual budget authority, of at least 97 percent. The leasing rate and rate of use of budget authority are measured using data from the PHA's last submitted year end statement in accordance with the methodology in the April 19, 2000 **Federal Register** notice, as amended by notice published on September 28, 2001.

(2) *Ineligible Applicants.* Any otherwise eligible applicant under paragraph (1)(b) is ineligible for reallocated baseline units and annual

budget authority if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP) once all PHAs have been rated or if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP) once all PHAs have been rated or if the PHA (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI, section 504, or section 109.

The Department will not accept or process an application under its semiannual invitations to apply for reallocated baseline units if any such fair housing charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application due date. The Department's decision regarding whether a fair housing charge, lawsuit, or letter of findings has been satisfactorily resolved will be based upon whether HUD determines that appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit or letter of findings.

(3) *Application Procedures.* (a) *Maximum and Minimum Voucher Request.* An eligible PHA may apply for the number of vouchers (baseline units) available for reallocation under the semiannual invitation, not to exceed a maximum of 5 percent of its baseline units, or 25 units, whichever is greater. The minimum number of vouchers that a PHA may apply for is 25. These limits do not apply to applications for vouchers for urgent housing needs arising from federally declared disasters.

(b) *Application Submission and Due Date.* Each January and July, after the invitation to apply for reallocated baseline units is posted on the Internet, an eligible PHA may submit an application to HUD Headquarters for the available units, up to the maximum voucher request. Eligible PHAs that have urgent housing needs arising from federally declared disasters may submit an application for any available reallocated baseline units and annual budget authority at any time. Urgent housing needs are defined as housing loss and permanent displacement and PHAs need not wait for the semiannual invitation to be posted.

(c) *Application Form.* The application form to be used is form HUD-52515 (section C, Average Monthly Adjusted Income, is not required). A PHA that applies for vouchers in connection with

a federally declared disaster must also submit an application transmittal letter fully explaining the urgent need for the requested vouchers, including the extent of permanent housing loss by very low income families.

(d) *Non-disaster Application Deadline.* All non-disaster applications in response to the semiannual invitations are due no later than 5 p.m. Eastern time on the 1st of February or August. If the 1st falls on a weekend, applications are due by 5 p.m. on the following Monday. Mailed applications must be postmarked by the due date and must be received within 10 days of the due date.

(e) *Non-disaster Application Not Funded or Not Fully Funded.* If for any reason a non-disaster application is not funded, or is not fully funded, it will not be automatically considered under the next semiannual invitation. A non-disaster application must be submitted in response to a specific semiannual invitation to be considered for vouchers (baseline units) announced in that invitation.

E. Selection and Funding Procedure

(1) *Applications for Disasters.* HUD Headquarters will review applications to address urgent needs due to housing loss and permanent displacement arising from federally declared disasters upon receipt. If HUD determines the need for vouchers is adequately demonstrated and that the PHA meets the required leasing rate or rate of utilization of annual budget authority of at least 90 percent, these applications will generally be immediately approved and funded on a first-come, first-served basis, up to the amount of baseline units and annual budget authority available for reallocation.

(2) *Non-disaster applications from PHAs with at least 97 percent utilization.* (a) *Same-State funding priority.* Highest funding priority for baseline units available for reallocation in each State will be given to applicant PHAs in the same State. Upon receipt of all non-disaster applications in a semiannual period, HUD will examine the applicant PHAs to determine whether any applicant PHA has jurisdiction in the same state as a PHA from which units available for reallocation in the semiannual period were de-reserved. Applicants from the same state as a PHA from which units available for reallocation were de-reserved, will be given highest priority for the number of units made available from a PHA in the same state, up to the number of units requested by the applicant PHA. Any applicants given such priority in selection for funding

will generally be funded at the end of the third month of the semiannual period (March or September).

(b) *Priority for SEMAP high performers.* After priority is given to applicant PHAs in the same State as a PHA from which units available for reallocation were obtained, the next priority for funding will be given to applicant PHAs that are SEMAP high performers once all PHAs have been rated under SEMAP. HUD will examine the applicant PHAs to determine whether any applicant PHA is a SEMAP high performer. SEMAP high performers will be given the next priority for funding up to the number of units requested by the applicant PHA. Any applicants given such priority in selection for funding will generally be funded at the end of the third month of the semiannual period (March or September).

(c) *Remaining applications.* All remaining applications will generally be funded at the end of the third month of the semiannual period (March or September) by allocating the remaining number of baseline units available among all of the remaining semiannual applicants on an even percentage basis in proportion to the number of units requested or remaining to be funded in each PHA's application. PHA applications will not be reduced below 25 units. Consequently, a PHA's request for a certain number of units may be fully approved or partially approved.

(d) *Possibility of Selection of Applicants by Lottery.* In the event HUD determines that there are too many applicants from the same state (in giving same-state funding priority) from SEMAP high performers (in giving priority to high performers), or among remaining applications in any semiannual period to award each applicant the minimum of 25 vouchers, applicants will be selected by lottery. The number of baseline units and annual budget authority for which same-State priority is being given, for which SEMAP high performer priority is being given, or remaining available under the invitation will then be allocated among the PHAs selected in the lottery on an even percentage basis in proportion to the number of units requested in each PHA's application.

(e) *No Applications or Insufficient Applications.* If there are no applications or insufficient applications in response to any semiannual invitation, the unused reallocated baseline units and related annual budget authority announced in the semiannual invitation will be included in the next semiannual invitation.

F. Summary of Semiannual Baseline Unit and Budget Authority Reallocations

A summary of each semiannual period's baseline unit reallocations, including lists of PHAs from which and to which units and annual budget authority were reallocated, will be posted on the Internet at the same site as the semiannual invitations: <http://www.hud.gov/offices/pih/programs/hcv>. Funding decisions will also be published in the **Federal Register**.

III. Welfare-to-Work Voucher Baseline Units and Annual Budget Authority

Baseline Welfare to Work voucher units and annual budget authority will be permanently de-reserved and become available for reallocation in a process and on a timetable that is separate from the process for other housing choice vouchers. The Department will determine each PHA's Welfare to Work voucher leasing rate no earlier than 30 days after the publication of this notice. Welfare to Work voucher funding of PHAs that have not achieved leasing of their Welfare to Work vouchers of at least 95 percent by that date will be subject to de-reservation and reallocation without additional warnings or cure periods prior to de-reservation.

In the future, if PHAs that receive additional Welfare to Work vouchers have not reached a Welfare to Work voucher leasing rate of at least 95 percent by the expiration date of the Welfare to Work voucher increment, unused Welfare to Work voucher funding will be subject to de-reservation at the expiration date of the Welfare to Work voucher increment.

When baseline Welfare to Work voucher units become available for reallocation, the Department will reduce the number of baseline Welfare to Work voucher units for the PHA that is relinquishing the units by not renewing funding for them under the PHA's consolidated annual contributions contract (CACC).

A. Invitation To Apply for Reallocated Baseline Welfare to Work Voucher Units and Annual Budget Authority

When baseline Welfare to Work voucher units and annual budget authority become available, the Office of Public and Indian Housing will post an invitation for Welfare to Work voucher PHAs to apply for reallocated baseline Welfare to Work voucher units and annual budget authority. The invitation will be posted on the Internet, on the Office of Public and Indian Housing Welfare to Work voucher page at:

<http://www.hud.gov/pih/programs/ph/wwv>. The invitation will announce the total number of baseline Welfare to Work voucher units available, the budget authority to be reallocated, and the per unit annual budget authority amount. The per unit annual budget authority amount for the reallocated baseline units made available under an invitation will be the average per unit annual budget authority amount for all of the units made available for reallocation and announced under that invitation.

B. Eligible Applicants and Application Procedures for Welfare to Work Voucher Funding

(1) *Eligible Applicants.* Reallocated Welfare to Work voucher baseline units and annual budget authority are available only to Welfare to Work voucher PHAs that have a Welfare to Work voucher program leasing rate of at least 97 percent.

(2) *Ineligible Applicants.* Any otherwise eligible applicant under paragraph (1) is ineligible for reallocated Welfare to Work baseline units and annual budget authority if the PHA is rated troubled under the Section 8 Management Assessment Program (SEMAP) once all PHAs have been rated or if the PHA (a) has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI, section 504, or section 109. The Department will not accept or process an application under any invitation to apply for reallocated Welfare to Work baseline units if any charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application due date. The Department's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit or letter of findings.

(3) *Application Procedures.* (a) *Maximum and Minimum Voucher Request.* An eligible PHA may apply for the number of Welfare to Work vouchers (baseline Welfare to Work voucher units) available for reallocation under the invitation, not to exceed the number of units which the PHA expects to lease within 12 months of the award of new funding, based on experience with the Welfare to Work voucher program.

There is no minimum number of vouchers for which the PHA must apply.

(b) *Application Submission and Due Date.* After the invitation to apply for reallocated baseline Welfare to Work voucher units is posted on the Internet, an eligible PHA may submit an application to HUD Headquarters. The invitation will specify the place where applications are to be submitted and the due date.

(c) *Application Form.* The application form to be used is form HUD-52515 (section C, Average Monthly Adjusted Income, is not required).

C. Selection and Funding Procedures for Welfare to Work Vouchers

(1) All applications from Welfare to Work voucher PHAs with at least 97

percent utilization will generally be funded on an objective basis such as by allocating the number of baseline Welfare to Work voucher units available among all of the eligible applicants on a percentage basis in proportion to the size of their initial Welfare to Work voucher allocation.

(2) In the event that HUD determines that there are too many applicants to award each applicant the number of Welfare to Work vouchers for which they have applied and are eligible, applicants will be selected by lottery. The number of baseline Welfare to Work voucher units and annual budget authority available under the invitation will then be allocated among the Welfare to Work voucher PHAs selected in the lottery on an equitable basis such

as on a percentage basis in proportion to the number of Welfare to Work voucher units in each PHA's initial Welfare to Work voucher allocation.

(3) If there are no applications or insufficient applications in response to an invitation, the unused reallocated baseline Welfare to Work voucher units and related annual budget authority announced in the invitation will be included in the next invitation.

Dated: October 25, 2001.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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