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## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and RCRHA policies governing moves within or outside the RCRHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the RCRHA's HCV program, whether the family moves to another unit within the RCRHA's jurisdiction or to a unit outside the RCRHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the RCRHA's jurisdiction. This part also covers the special responsibilities that the RCRHA has under portability regulations and procedures.

#### PART I. MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD regulations provides conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the RCRHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

##### RCRHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must use the RCRHA termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the RCRHA a copy of any owner eviction notice [24 CFR 982.551(g)].

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- The RCRHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
  - The RCRHA determines the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the RCRHA must issue the family a new voucher, and the family and RCRHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the RCRHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the RCRHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

### **10-I.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies conditions under which the RCRHA may deny a family permission to move and ways in which the RCRHA may restrict moves by a family.

#### **Denial of Moves**

HUD regulations permit the RCRHA to deny a family permission to move under the following conditions:

##### ***Insufficient Funding***

The RCRHA may deny a family permission to move if the RCRHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

##### **RCRHA Policy**

The RCRHA will deny a family permission to move on grounds the RCRHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the RCRHA; (b) the RCRHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the RCRHA can demonstrate, in accordance with the policies that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. This policy applies to moves within the RCRHA's jurisdiction as well as to moves outside it under portability. Once funds are available, the RCRHA will allow the move.

##### ***Grounds for Denial or Termination of Assistance***

The RCRHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

RCRHA Policy

RCRHA will grant a family permission to move if RCRHA has no grounds to deny or terminate the family's assistance for program violations, (a thorough definition of program violations can be found in the Administrative Plan). Further definition of a family's obligations include:

The client has paid off any repayment agreement.

Client has provided a copy of the thirty (30) day notice, submitted to and signed by the current landlord. The notice must clearly state the client is in good standing and owes no money.

The client has not received a notice of cancellation from the RCRHA.

However, in addition, if the calculations reveal that the subsidy amount to be paid to the new owner on behalf of the client would be zero, RCRHA would not render any assistance should the family proceed with the move.

**Restrictions on Elective Moves [24 CFR 982.314(c)]**

HUD regulations permit the RCRHA to prohibit an elective move by a participant family during the family's initial lease term. They also permit the RCRHA to prohibit more than one elective move by a participant family during any 12-month period.

RCRHA Policy

The RCRHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the RCRHA's jurisdiction or outside it under portability.

The RCRHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the RCRHA's jurisdiction.

The RCRHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), victims of domestic violence, or to address an emergency situation over which a family has no control.

In addition, the RCRHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

**10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify the RCRHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the RCRHA's jurisdiction under portability, the notice to the RCRHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

### **Approval**

#### RCRHA Policy

Upon receipt of a family's notification that it wishes to move, the RCRHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The family will provide the release form prepared by the landlord. The RCRHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification and release form.

### **Reexamination of Family Income and Composition**

#### RCRHA Policy

For families approved to move to a new unit within the RCRHA's jurisdiction, the RCRHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the RCRHA's jurisdiction under portability, the RCRHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### RCRHA Policy

For families approved to move to a new unit within the RCRHA's jurisdiction, the RCRHA will issue a new voucher within 10 business days of the RCRHA's written approval to move. No briefing is required for these families. The RCRHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the RCRHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the RCRHA's jurisdiction under portability, the RCRHA will follow the policies set forth in Part II of this chapter.

### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the RCRHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Standard procedure for treatment of the HAP on a vacated unit will be as follows: If family moves from the unit between the 1st and the 31st of the month, the previous landlord will be paid the HAP.

## **PART II: PORTABILITY**

### **10-II.A. OVERVIEW [HCV Guidebook, PIH Notices 2004-12, PIH 2007-5, PIH 2008-43, and PIH 2011-3]**

HUD's guidebook and PIH notices provide guidance on public housing agency (PHA) administrative responsibilities related to family moves with continued assistance both within a PHA's jurisdiction and portability moves. In addition to reviewing the administrative responsibilities of the initial PHA and the receiving PHA for moves with continued assistance under portability, HUD's notices set-forth additional requirements for PHAs who deny moves due to insufficient funding both within and outside the initial PHA's jurisdiction in accordance with 24 CFR 982.314(e)(1).

The most current guidance is PIH 2011-3 that also:

- Sets forth the penalties that may be imposed on PHAs that deny family requests to move on the basis of 24 CFR 982.314(e)(1) if the conditions necessary to deny the move on the basis of insufficient funding do not exist.
- Requires PHAs to notify HUD when it becomes necessary to deny families' requests to move due to insufficient funding.
- Requires receiving PHAs to provide a notification by email or other confirmed delivery method to the initial PHA on its intent to bill or absorb before the family is approved for the portability move.
- Encourages PHAs to enlist the assistance of the local Area HUD Office in resolving billing related issues.
- Outlines the steps an initial PHA who does not receive annual updates for families under billing arrangements should take in seeking assistance from their Area HUD Office as well as receiving PHAs who do not receive timely payments from initial PHAs.
- Updates the latest portability guidance issued in HUD Notice.

### **Background**

Portability is a comprehensive process for and PHA and staff should become familiar with the regulations and PIH notices that impact this area. Specific PIH notices include PIH 2008-43, PIH

2004-12, PIH 2007-5 and PIH 2011-3. One of the key features of the housing choice voucher program is the mobility of the assistance. The regulations at 24 CFR 982.353 provide that housing choice voucher participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located. Moves with continued assistance can occur both inside and outside of the initial PHA's jurisdiction. The term "portability" refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issues the family its voucher (the initial PHA). Program regulations covering where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family moves) are found at 24 CFR 982.353 through 982.355.

When a family moves under portability, the receiving PHA may choose to absorb the family into the receiving PHA's program or bill the initial PHA. The program regulations at 24 CFR 982.355(e) provide that the receiving PHA may bill the initial PHA for housing assistance payments (HAP) and administrative fees to fund the assistance for a portable family. The regulations require that the initial PHA must promptly reimburse the receiving PHA for the full amount of the HAP payments and with 80 percent of the on-going administrative fee (or a negotiated amount if both PHAs agree) for each month that the family receives assistance from the receiving PHA. For Calendar Year 2010, administrative fees for portable vouchers are based on 80 percent of the Column B posted rate for the PHA that is being billed. PHAs apply the pro-ration factor determined by HUD to the 80 percent of the Column B posted rate. The posted administrative fees are found at [www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm](http://www.hud.gov/offices/pih/programs/hcv/adminfees2010.cfm). These pro-rated fee amounts may be used for the entire calendar year to avoid the need for PHAs to re-calculate their portable fees each quarter. Information on administrative fees for portability billing purposes for subsequent calendar years will be provided in the annual HUD guidance on administrative fees.

The regulations further provide that the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial PHA and the receiving PHA must also comply with billing and payment deadlines under the financial procedures. HUD may assess penalties against an initial PHA or a receiving PHA for violations, as determined by HUD, of the portability requirements.

HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA annual contributions contract (ACC) (see 24 CFR 982.355(f)(1)). HUD will continue to exercise this authority to transfer units and funds from the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the billing procedures described below.

The RCRHA will follow the rules and policies as set forth by HUD when it is acting as the initial or the receiving PHA for a family.

RCRHA shall not deny a victim of domestic violence that is eligible under VAWA the access to portability.

The RCRHA will administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The RCRHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. [ 24 CFR 982.53].

**Equal Opportunity Requirements**

The public housing agency must administer its housing choice voucher program in compliance with all applicable fair housing requirements, including the authorities cited at 24 CFR 5.105(a) and title II of the Americans with Disabilities Act. The PHA must also affirmatively further fair housing in accordance with 24 CFR 903.7(o) by identifying and addressing any impediments to fair housing choice, including helping families use their vouchers to move to non-minority concentrated areas both within its jurisdiction and through portability moves. See 24 CFR 982.53 for the equal opportunity requirements for the Housing Choice Voucher program and Chapter 2 for RCRHA requirements.

**10-II.B. INITIAL PHA ROLE (When RCRHA is the Initial PHA)****Allowable Moves under Portability**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the RCRHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and RCRHA's policy, determines whether a family qualifies.

***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the RCRHA discretion to deny a portability move by an applicant family for the reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

**RCRHA Policy**

In determining whether or not to deny an applicant family permission to move under portability because the RCRHA lacks sufficient funding or has grounds for denying assistance to the family, RCRHA will follow the policies established within the Administrative Plan.

In addition, RCRHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

RCRHA Policy

If neither the head of household nor the spouse/co head of an applicant family had a domicile (legal residence) in the RCRHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in the RCRHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The RCRHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or victims of domestic violence. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

***Participant Families***

The RCRHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b.)]

RCRHA Policy

The RCRHA will determine whether a participant family may move out of the RCRHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth in the program. The RCRHA will notify the family of its determination in accordance with the approval policy set forth in the policies.

**Determining Income Eligibility**

***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2004-12].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)]. However, an initial HAP on a new unit cannot be executed if the amount of assistance is -0-.

**Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

RCRHA Policy

For a participant family approved to move out of its jurisdiction under portability, the RCRHA generally will conduct a reexamination of family income and composition only

if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

If the participant family's income exceeds the income limit of the Receiving PHA, the family will not be denied assistance. However, the PHA cannot enter into a HAP if the amount of assistance is -0-.

The RCRHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

### **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this plan require the RCRHA to provide information on portability to all applicant families that qualify to lease a unit outside the RCRHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

#### RCRHA Policy

A individual briefing will be mandatory for all portability families. The briefing will be scheduled within 10 business days after the Receiving PHA receives the documents from the family or the Initial PHA.

The RCRHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). The RCRHA will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The RCRHA will advise the family which PHA policies and procedures that they will be under, including subsidy standards and voucher extension policies.

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the RCRHA will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

#### RCRHA Policy

For families approved to move under portability, the RCRHA will issue a new voucher within 10 business days of the RCRHA's written approval to move. The initial term of the voucher will be 60 days.

If the family moving under portability is living in a unit where HAP has been abated because of the failure to complete the HQS repairs, or the client previously vacated their unit due to unsafe condition, the voucher issuance date will be the effective date of that action.

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## Voucher Extensions and Expiration

### RCRHA Policy

The RCRHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the RCRHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) as a reasonable accommodation for persons with disabilities.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

### **Portability-Initial PHA Responsibilities: Contacting the Receiving PHA**

When a family wishes to move under portability, the family must inform the initial PHA of the area to which the family wishes to move. In the case where the family is not currently a program participant, the initial PHA must determine if the family is income eligible in the area to which the family wishes to move. If the family is not income eligible in the area to which the family wishes to move, the PHA must inform the applicant family they may not move to the area in question and receive voucher assistance. Income eligibility is not re-determined when a participant family (a family that is already under a HAP contract) exercises portability.

The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will bill or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request. The policies outline the reasons a PHA may deny a family's request. Once the portability request is approved, the initial PHA issues the family a voucher and must contact the receiving PHA on the family's behalf. The initial PHA must promptly notify the receiving PHA to expect the incoming family (24 CFR 982.355(c)(2)). This means the initial PHA contacts the receiving PHA on the family's behalf, typically by telephone, fax, or email. Simply referring the family to HUD or to a website for information on the receiving PHA's address does not fulfill the responsibilities of the initial PHA under the program regulations. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA (e.g., the name and telephone number of the staff person responsible for working with incoming portability families and any procedures related to appointments for voucher issuance the receiving PHA has shared with the initial PHA). The Form HUD-52665, Family Portability Information, contains a line that the initial PHA uses to identify the receiving PHA

### RCRHA Policy

Because the portability process is time-sensitive, the RCRHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The RCRHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The RCRHA will pass this information along to the family. The RCRHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

**Portability-Initial PHA Responsibilities: Part I of the Form HUD-52665**

Once the family is approved to move using portability, the initial PHA completes Part I of the Form HUD-52665 and mails or faxes it to the receiving PHA, along with a copy of the family's voucher issued by the initial PHA, a current copy of Form HUD-50058, and copies of the income verification supporting the form. (Note that in the case of an applicant, the initial PHA has not completed the HUD-50058 and submitted the information to HUD because the family is not yet a new admission. However, the PHA must provide the family information and income information to the receiving PHA in a format similar to the Form HUD-50058 so that the information is easily available for use by the receiving PHA.)

Part I of the form provides the date by which the initial billing notice provided by the receiving PHA must be received by the initial PHA. The initial billing submission must be completed and mailed by the receiving PHA within 10 working days of the HAP contract execution but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

If the initial PHA has not received a billing notice by the deadline and intends not to accept a late billing, the initial PHA must inform the receiving PHA of this decision in writing. If the initial PHA informs the receiving PHA that it will not honor a late billing, the initial PHA is not required to honor any billing notice received after the billing deadline. If the initial PHA still subsequently receives a late billing notice on behalf of the family, it simply returns the late Form HUD-52665 to the receiving PHA, and the receiving PHA must absorb the family.

In certain circumstances, HUD may require the initial PHA to accept the late billing (such as where the receiving PHA does not have the funds to support the voucher and the family would be terminated if the initial PHA refused to accept the late billing). The initial PHA may contact HUD to report the receiving PHA's failure to submit the bill in accordance with these procedures. HUD may take action to address the receiving PHA's failure to do so, which may include reducing the receiving PHA's administrative fee. Additionally, HUD may subsequently transfer units and funding from the receiving PHA to the initial PHA when it is feasible, since the initial PHA was required to accept the late billing.

**RCRHA Policy**

In addition to these documents, the RCRHA will provide the following information, if available, to the receiving PHA:

Social security Numbers (SSNs)

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- Documentation of SSNs for all family members that are on file
  - Documentation of legal identity
  - Documentation of citizenship or eligible immigration status
  - Documentation of participation in the earned income disallowance (EID) benefit
  - Documentation of participation in a family self-sufficiency (FSS) program

The RCRHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3], upon the family's request. RCRHA Policy

If the RCRHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail. If the PHA reports that the family is not yet under HAP contract, the RCRHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The RCRHA will send the receiving PHA a written confirmation of its decision by mail.

The RCRHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

The Receiving PHA will notify the Initial PHA in writing of any termination of assistance to families within 10 working days of the termination of assistance. If a hearing is required and requested by the family, the hearing will be conducted by the Receiving PHA, using the regular hearing procedures included in this Administrative Plan. A copy of the hearing decision will be furnished to the Initial PHA.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2011-03]**

#### RCRHA Policy

The RCRHA will make regular monthly payments on its monthly check run and will utilize direct deposit when available to ensure that the payment is received by the deadline unless the receiving PHA notifies the RCRHA that direct deposit is not acceptable to them.

### **10-II.C. RECEIVING PHA ROLE**

#### **Portability-Receiving PHA Responsibilities: Processing Responsibilities**

The receiving PHA must respond by email or other confirmed delivery method to the initial PHA's inquiry to determine if the family's voucher will be billed or absorbed. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. If the receiving PHA notifies the initial PHA that they will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date. This prevents placing a financial hardship on the initial PHA and putting a family that has already terminated the lease and vacated their assisted

unit and moved to the new jurisdiction at risk of losing their assistance. After receiving the form HUD-52665 and supporting documentation from the initial PHA, the receiving PHA must promptly issue a voucher to the family for its search in the receiving PHA jurisdiction, the term of which may not expire before the expiration date of the initial PHA voucher. HUD expects the receiving PHA to process the family's paperwork and issue the incoming family a voucher for its jurisdiction within two weeks of receiving the HUD-52665 and supporting documentation, provided the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures.

A receiving PHA should not process the family if the initial PHA voucher has already expired when it receives the paperwork from the initial PHA, but should refer the family back to the initial PHA. The initial PHA would have to decide to extend the term of the initial PHA voucher (and the billing deadline) before the receiving PHA would process the portability move in such an instance.

The receiving PHA does not re-determine income eligibility for a portable family that was already receiving voucher assistance and may not delay the family's housing search in issuing the voucher. Should the receiving PHA wish to conduct its own background checks and/or conduct a new income reexamination on a family that has already received housing assistance payments under the initial PHA, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit until those processes are completed. However, the PHA may take subsequent action (e.g., recalculating the HAP payment based on updated income information; terminating the family's participation in the program due to criminal background or failing to disclose necessary information) against the family based on the results.

In the case of an applicant family, the receiving PHA may delay issuing or otherwise delay approval of a unit only if the re-certification is necessary to determine income eligibility. For example, if the applicant family initially reported they had no earned income but they are moving because they obtained new employment, the receiving PHA may need to conduct a recertification of income to ensure the family is income eligible in the receiving PHA's jurisdiction.

The receiving PHA may always delay approval of the unit or issuance of the voucher if the family refuses to comply with the receiving PHA procedures. In any case where the receiving PHA is refusing to process or provide assistance under the portability procedures, the family must be given the opportunity for an informal review or hearing in accordance with 24 CFR 982.554 or 982.555.

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA voucher, either when it initially issues its own voucher or by subsequently extending its own voucher's term. However, if the receiving PHA provides the family with search time beyond the expiration date of the initial PHA's voucher, it must inform the initial PHA of the extension and should bear in mind the billing deadline that is based on the expiration date of the voucher issued by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to

process a Request for Tenancy Approval, execute a HAP contract, and cover the anticipated delivery time (if the PHA is not submitting the billing information by fax or email) so that it will be received by the initial PHA by the deadline date.

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA, but instead wishes to return to the initial PHA or wishes to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extensions of search time provided by the receiving PHA voucher are only valid for the family's search in the receiving PHA jurisdiction. Any extensions of the initial PHA voucher necessary to allow the family additional search-time to return to the initial PHA's jurisdiction or to move to another jurisdiction would be at the discretion of the initial PHA.

The receiving PHA may absorb the family into its own program once the HAP contract is executed on behalf of the family by the receiving PHA, assuming it has funding available under its ACC to do so and such a decision will not result in over-leasing for the Calendar Year. The receiving PHA may also absorb a portable family assisted through a billing arrangement by terminating the billing arrangement with the initial PHA. In such a case, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family.

Although a receiving PHA notifies the initial PHA of its intent to absorb an incoming family early in the portability process, a PHA does not technically "absorb" a family into its program until the receiving PHA executes a HAP contract on behalf of the family in the receiving PHA jurisdiction. PHAs may not engage in sham or fake portability paperwork exercises in an attempt to address their utilization or leasing problems. If the family is not placed under HAP contract in the receiving PHA jurisdiction, the receiving PHA cannot absorb the family.

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

### **Initial Contact with Family**

When a family moves into the RCRHA's jurisdiction under portability, the family is responsible for promptly contacting the RCRHA and complying with the RCRHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the RCRHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2004-12].

When a portable family requests assistance from the RCRHA, the RCRHA must promptly inform the initial PHA whether the RCRHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the RCRHA initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

#### RCRHA Policy

Within 10 business days after a portable family requests assistance, the RCRHA will notify the initial PHA whether it intends to bill the initial PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the RCRHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under "Denial or Termination of Assistance.")

#### **Briefing**

HUD allows the RCRHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2004-12].

#### RCRHA Policy

The RCRHA will not require the family to attend a briefing. The RCRHA will provide the family with a portability briefing packet and, inform the family about the RCRHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The RCRHA will suggest the family attend a full briefing at a later date.

#### **Income Eligibility and Reexamination**

HUD allows the RCRHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the RCRHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. The RCRHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

#### RCRHA Policy

For any family moving into its jurisdiction under portability, the RCRHA will conduct a new reexamination of family income and composition and criminal background check. However, the RCRHA will not delay issuing the family a voucher for this reason. Nor will the RCRHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the RCRHA cannot otherwise confirm that

the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the RCRHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family moves into its jurisdiction under portability, the RCRHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the RCRHA during the term of the RCRHA's voucher [24 CFR 982.355(c)(6)].

### **Timing of Voucher Issuance**

HUD expects the RCRHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the RCRHA, and the family complies with the RCRHA's procedures [Notice PIH 2004-12].

#### RCRHA Policy

When a family ports into its jurisdiction, the RCRHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the RCRHA's procedures. The RCRHA will update the family's information when verification has been completed.

### **Voucher Term**

The term of the RCRHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

#### RCRHA Policy

The RCRHA's voucher will expire on the same date as the initial PHA's voucher.

### **Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]**

The RCRHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the RCRHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### RCRHA Policy

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The RCRHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the RCRHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The RCRHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

**Portability-Receiving PHA Responsibilities: Part II of Form HUD-52665**

The receiving PHA sends Part II of Form HUD-52665 to the initial PHA. If the receiving PHA will bill the initial PHA, the receiving PHA not only completes Part II of the Form HUD-52665, but also attaches a copy of the new Form HUD-50058 before returning it to the initial PHA. The instructions of the Form HUD-52665 provide that the receiving PHA must complete and mail (which may include electronic mail or fax) Part II of the form within 10 working days from the date a HAP contract is executed on behalf of a family but no later than 60 days following the expiration date of the family voucher issued by the initial PHA.

**The initial PHA is generally not obligated to honor initial billings that are not completed and mailed by the receiving PHA within 10 working days after the date the HAP contract is executed.** (Note that it is the date the HAP contract is executed, not the effective date of the HAP contract, which is at issue. For instance, if a PHA executes a HAP contract within 60 days of the approval of the unit, the HAP contract may be retroactive to the date the unit was approved. It is the date the PHA executed the contract, not the retroactive effective date of the contract, that establishes the deadline by which the initial billing must be mailed, emailed or faxed.) The initial PHA must immediately inform the receiving PHA in writing of its decision not to accept the late billing submission. A receiving PHA that failed to send the initial billing within 10 working days following the date the HAP contract is executed is generally required to absorb the family into its own program unless the initial PHA is willing to accept the late submission.

**Portability-Timing of the Initial and Subsequent Billing Payments**

The initial PHA must pay the first billing amount due within 30 calendar days of receipt of Part II of the Form HUD-52665. Subsequently, the initial PHA must make payment each month the billing arrangement is in effect **no later than the fifth working day of each month.** The payment must be provided in a form and manner that the receiving PHA is able and willing to accept.

In many cases billing difficulties simply result from miscommunications and the PHAs involved are able to resolve the problem with HUD's assistance. HUD encourages PHAs to work cooperatively to resolve billing difficulties. However, it is ultimately the responsibility of the initial PHA to make billing payments in a timely manner.

The program regulations at 24 CFR 982.355(f)(1) provide that HUD may transfer funds for assistance to portable families to the receiving PHA from funds available under the initial PHA

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ACC. Upon request of the receiving PHA, HUD will exercise this authority to transfer baseline units and funding from the budget authority of the initial PHA to the receiving PHA in cases where the initial PHA fails to comply with the initial and subsequent monthly billing due dates described above (see section 12 of this notice for further information on the process by which units and funding may be transferred as a result of non-compliance with billing due dates).

The initial PHA may not terminate or delay making payments under existing billing arrangements as a result of over-leasing or funding shortfalls in the initial PHA's program. PHAs may only terminate HAP contracts as the result of insufficient funding in accordance with 24 CFR 982.454 to which they are a party.

### **Portability-Receiving PHA: On-going Responsibilities**

The receiving PHA must send the initial PHA a copy of the updated Form HUD-50058 at each annual recertification for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount. The Form HUD-50058 should be sent to the initial PHA as soon as the family's annual reexamination is complete but no later than 10 working days following the effective date of the annual reexamination. The purpose of this notification is to serve as an annual "reconciliation" to assist both PHAs in fulfilling its accounting and record-keeping responsibilities.

**Annual Reexamination.** The RCRHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the RCRHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

### RCRHA Policy

The RCRHA will send a copy of the updated HUD-50058 by fax or email and regular mail at the same time the participant and owner are notified of the reexamination results.

**Change in Billing Amount.** The RCRHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

**Failure to Fulfill Obligations**

Should the initial PHA fail to receive an updated Form HUD-50058 within 30 days after the effective date of the annual recertification date, it must send a letter to the receiving PHA to verify the status of the family and a copy of the letter must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the initial PHA. If the receiving PHA fails to correct the problem within 30 days following the notification (e.g., initial PHA informs receiving PHA of late annual billing paperwork June 15<sup>th</sup> and the paperwork is not received by July 15<sup>th</sup>), the initial PHA may request by memorandum to the Director of the OPH with jurisdiction over the initial PHA that HUD require the receiving PHA to absorb the vouchers in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the receiving PHA. The initial PHA must continue to make the monthly payment to the receiving PHA until instructed otherwise by the HUD Area Office.

The OPH will notify the receiving PHA (and the OPH director in the HUD Area Office with jurisdiction over the receiving PHA) within 15 working days of receiving the initial PHA memorandum requesting the absorption of units. The OPH will provide the receiving PHA with 15 working days to respond and provide any supporting documentation if the receiving PHA is contesting whether the paper in question was late. The OPH in the HUD Area Office with jurisdiction over the initial PHA is the lead HUD office in resolving any dispute over the timeliness of the annual submission. That office is responsible for examining all documentation submitted by the PHAs and then determining if the paperwork was late if the receiving PHA contests the initial PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the receiving PHA had to respond to the OPH memorandum.

The OPH will send a letter to both the initial and receiving PHAs with copies to the Area Office with jurisdiction over the receiving PHA indicating whether the vouchers should be absorbed by the receiving PHA. If the vouchers are to be absorbed by the receiving PHA, the billing arrangement on behalf of the family or families in question ceases at the first of the following month after the date of the OPH letter (e.g., if the OPH letter is dated June 15, the billing arrangement ends July 1). The initial PHA is still responsible for any outstanding payments due to the receiving PHA.

HUD may in certain instances require the initial PHA to honor a late submission of the annual recertification documents (such as where the receiving PHA is over-leased and is in danger of not being able to stay under unit months available for the Calendar Year). In such a case HUD may take action to address the receiving PHA's failure to submit the notification in a timely manner, which may include reducing the receiving PHA's administrative fee.

The receiving PHA is also required to send a new Form HUD-52665 along with the Form HUD-50058 to report any change in the billing amount, if applicable. The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. However, under no

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circumstances should the notification be later than 10 working days following the effective date of the change in the billing amount.

**If the receiving PHA fails to send the Form HUD-52665 within 10 working days following the effective date of the change in the billing amount, the initial PHA is not responsible for paying any increase in the monthly billing amount incurred prior to the notification.**

If the receiving PHA is absorbing a family for which it has been billing or if the housing assistance payments are terminated for any reason, the receiving PHA is encouraged to provide adequate notice of the effective date of the absorption or termination to avoid having to return a payment. In any event the receiving PHA **must** notify the initial PHA no later than 10 working days following the effective date of the termination of the billing arrangement. The receiving PHA may not retroactively absorb families for which the receiving PHA was previously billing for any time period that commences before 10 working days from the time the receiving PHA notifies the initial PHA of the absorption, with one exception. If a PHA is experiencing a funding shortfall and needs to take steps to avoid terminations of assistance allows a receiving PHA to retroactively absorb families for which the receiving PHA was previously billing if the receiving PHA and the initial PHA agree. In these cases, the receiving PHA reimburses the initial PHA for payments made back to the effective date of the absorption but only for the current calendar year.

In the case where a family currently under a billing arrangement subsequently decides it wants to move under portability to yet another jurisdiction, the receiving PHA does not issue the family a voucher in order to do so. Instead, the receiving PHA notifies the initial PHA of the family request to port to another jurisdiction. The initial PHA is responsible for issuing the family's voucher and sending the Form HUD-52665 and supporting documentation to the new receiving PHA. Good communication between all three PHAs is very important in such a circumstance.

### **Portability-Summary of Portability Billing Deadlines**

The following summarizes the relevant deadlines under the portability billing procedures.

- a. **Submission of Initial Billing Amount (Part II of the Form HUD- 50058)** – Receiving PHA must complete and mail initial billing notice (1) no later than 10 working days following the date the HAP contract was executed and (2) in time that it will be received no later than 60 days following the expiration date of the family's voucher issued by the initial PHA.
- b. **Payment of First Billing Amount** – Initial PHA makes payment within 30 days of receipt of Part II of the Form HUD 50058 indicating billing amount.
- c. **Payment of Subsequent Billing Amounts** – The initial PHA is responsible for ensuring that subsequent billing amounts are received no later than the fifth working day of each month for which the monthly billing amount is due.

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- d. **Notification of Change in Billing Amount or Other Action** – The receiving PHA notifies the initial PHA of any change in the billing amount as soon as possible (preferably before the effective date to avoid retroactive adjustments) but in no circumstance any later than 10 working days following the effective date of the change.

## **10-III.D. OTHER PORTABILITY CONDITIONS**

### **Portability-Procedures for the Transfer of Units and Funding as a Result of Late Payments**

In the case where the initial PHA fails to make the monthly payment to the receiving PHA by the fifth working day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family or families, the total billing payment that was late or has yet to be paid, and the date the payment was ultimately received (if received at all). A copy of the notification must be sent to the Director (or the staff person designated by the Director) of the Office of Public Housing (OPH) in the HUD Area Office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification (e.g., receiving PHA informs of late payment in June and the August payment is late), the receiving PHA may request by memorandum to the Director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit or units and funding in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. A copy of the memorandum must be sent to the initial PHA.

The OPH will notify the initial PHA (and the OPH director in the HUD Area Office with jurisdiction over the initial PHA) within 15 working days of receiving the receiving PHA's memorandum requesting the transfer of units and funds. The OPH will provide the initial PHA with 15 working days to respond and provide any supporting documentation if the initial PHA is contesting whether the billing payments in question were late. The OPH in the HUD Area Office with jurisdiction over the receiving PHA is the lead HUD office in resolving any dispute over the timeliness of the billing payments. That office is responsible for examining all documentation submitted by the PHAs and then determining if the billing payments were late if the initial PHA contests the receiving PHA's report. The OPH must render a decision no later than 15 working days following the deadline by which the initial PHA had to respond to the OPH memorandum.

If the OPH determines that the payments in question were late, the OPH will send a memorandum to the Housing Voucher Financial Management Division (with copies to the Area Office with jurisdiction over the initial PHA as well as to both PHAs) indicating the number of units to be permanently transferred from the initial PHA to the receiving PHA. The number will correspond with the number of families for which billing payments were late. Within 30 days of receiving the OPH memorandum recommending transfer of units and funds, HUD will reduce the baseline number of units and concomitant budget authority from the initial PHA's ACC and increase the baseline number of units and budget authority on the receiving PHA's ACC in order to adjust the PHA program size as a result of poor portability billing performance. HUD will use the revised baseline numbers to readjust the funding. The billing arrangement on behalf of the

family or families in question ceases with the transfer of the unit, although the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

These transfer policies notwithstanding, failure to comply with the financial procedures required by HUD, including the billing and payment deadlines outlined above, may also result in the reduction of administrative fees.

**Portability-Penalties for the Receiving PHA's Failure to Inform the Initial PHA of the Termination of a Billing Arrangement in a Timely Manner**

If HUD determines that the receiving PHA has not notified the initial PHA that a billing arrangement has been terminated in a timely manner and has continued to accept payments from the initial PHA, HUD may reduce administrative fees for the receiving PHA.

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least 3 months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- The receiving PHA must return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, the receiving PHA must notify the Office of Public Housing in the HUD Area Office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

HUD may, in its discretion, take the following actions:

- Direct the PHA not to utilize their administrative fee reserve account in accordance with 24 CFR 982.155(b)(3).
- Reduce the administrative fees for the receiving PHA by up to 10 percent of the monthly billing amount in question for each month that the billing payments continued after the billing arrangement was terminated, taking into consideration the circumstances of the particular case. The OPH in the HUD Area Office with jurisdiction over the receiving PHA will inform the PHA by letter of the amount of the sanction imposed as a result of the PHA's failure to promptly notify the initial PHA that the billing arrangement is terminated. The OPH must send a copy of the letter to the FMC and the FMD.
- Further reduce the administrative fee if the receiving PHA does not promptly return the overpayment to the initial PHA.

This general policy does not in any way restrict the OPH Director from exercising additional remedial action in the event that the receiving PHA failed to notify initial PHAs that the billing arrangements have been terminated.

**Denying Family Requests to Move**

A PHA may only deny a family's request to move if it has grounds to do so under the program regulations, which are as follows:

- 1) The PHA has grounds to deny the move because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553.
- 2) The family is a non-resident applicant, or the family was a non-resident applicant that has not yet been assisted in the initial PHA jurisdiction for twelve months since being admitted to the program (see 24 CFR 982.353(c)).
- 3) The family is an applicant and is not income-eligible (see 24 CFR 982.353(d)(1)) in the area in which they wish to initially lease a unit.
- 4) The PHA has established policies on the timing and frequency of moves in accordance with 24 CFR 982.314(c)(2), and the requested move does not comply with those policies.
- 5) The PHA does not have sufficient funding for continued assistance to support the move in accordance with 24 CFR 982.314(e)(1).

In addition, the voucher regulations at 24 CFR 982.353(b) further provide that the initial PHA must deny a family's request to move if the family has moved out of its assisted unit in violation of the lease. However, as previously noted in HUD Notice PIH 2007-5, the Violence Against Women and Justice Department Reauthorization Act 2005 (VAWA 2005) amended section 8(r) of the U.S. Housing Act to provide an exception to the prohibition against a family moving under the portability provisions in violation of the lease. VAWA 2005 provides that the family may receive a voucher and move in violation of the lease under the portability procedures if the family has complied with all other obligations of the voucher program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit. The final rule, HUD Programs, Violence Against Women Act Conforming Amendments, was published in the *Federal Register* on October 27, 2010.

If the circumstances described above exist, the PHA may allow a family to move under portability procedures if the only basis for the denial is that the family is violating the lease agreement. The PHA may request that the family provide the HUD-approved certification form (Form HUD-50066), or other acceptable documentation in order to verify the family's claim that the request to move is prompted by incidences of abuse in the unit.

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**Denying Family Requests to Move Due to Insufficient Funding**

A PHA may only deny a request to move to a higher cost unit within the PHA's jurisdiction or to higher cost area in accordance with 24 CFR 982.314(e)(1) if the PHA would be unable to avoid terminations of housing choice voucher assistance for current participants during the calendar year in order to remain within its budgetary allocation (including any available HAP reserves) for housing assistance payments.

The PHA must provide written notification to the local HUD Office when they determine it is necessary to deny moves to a higher cost unit based on insufficient funding. The notification must include the following documentation:

1. A financial analysis that demonstrates insufficient funds are projected to meet the current calendar year projection of expenses. The projection must not include vouchers that have been issued but are not yet under contract.
2. A statement certifying the PHA has ceased issuing vouchers and will not admit families from their waiting list while the limitation on moves to a higher cost unit is in place.
3. A copy of the PHA's policy stating how the PHA will address families who have been denied moves. The requirements of the policy are described below.

For moves within the initial PHA's jurisdiction, a "higher cost unit" is defined as a unit in which the PHA would have to pay a higher subsidy amount due to an increase in the gross rent for the new unit.

For portability moves, a "higher cost area" is defined as an area where a higher subsidy amount will be paid for a family because of higher payment standard amounts or "more generous" subsidy standards (e.g., the receiving PHA issues a 3-bedroom voucher to a family that received a 2-bedroom voucher from the initial PHA). Before denying the family's request to move due to insufficient funding, the initial PHA must contact the receiving PHA and confirm via email or other confirmed delivery method whether the receiving PHA will administer or absorb the family's voucher. HUD encourages PHAs to communicate this information via email in order to expedite the families' requests. Once the receiving PHA makes the commitment to absorb the voucher, they cannot reverse their decision. If the receiving PHA is willing to absorb the family, there are no grounds to deny the portability move under 24 CFR 982.314(e)(1). The initial PHA may also take into consideration any reported changes in the family's income or composition that may result in a decreased subsidy amount therefore not resulting in an increased cost to the initial PHA.

A PHA **may not** deny a requested move due to insufficient funding under 24 CFR 982.314(e)(1) simply because the family wishes to move to a higher cost unit within the PHA's jurisdiction or to a higher cost area.

A PHA **may not** deny requests to move, including portability moves, if the subsidy for the new unit is equal to or less than the current subsidy being paid for the family or if the area the family has selected is a lower cost area. A “lower cost area” is defined as an area where the subsidy amount is equal to or lesser than the current subsidy paid because of lower payment standards or less generous subsidy standards (e.g. the receiving PHA issues a 2- bedroom voucher to a family that received a 3-bedroom voucher from the initial PHA).

In projecting whether there is sufficient funding available for the remainder of the calendar year in order to approve the move, the PHA may make reasonable estimates to factor in conditions such as pending rent increases and the attrition rate for families leaving the program. However, a PHA may not include projected costs for vouchers that have been issued to families from the waiting list but not yet leased as part of this analysis. Vouchers that have been issued to those on the waiting list cannot be considered an expense for purposes of determining whether to deny a move due to insufficient funding until such time that HAP contracts are executed and the PHA is legally obligated to make HAP payments.

HUD has posted a spreadsheet on the HUD Housing Choice Voucher Program website that may be used by a PHA to determine if sufficient funding is available to support to a move. The address is: <http://www.hud.gov/offices/pih/programs/hcv>. This spreadsheet is an example of one method of determining if sufficient funding is available and a PHA is not required to use it when making its determination to deny a move under 24 CFR 982.314(e)(1). However, in any case where the PHAs denies a family’s request to move in accordance with 24 CFR 982.314(e)(1), the PHA must be able to demonstrate how it determined that sufficient funding was unavailable when the PHA denied the family’s request to move.

The PHA must establish policies in its Administrative Plan which state how the agency will address families who have requested a move and were denied due to lack of funding once the PHA has determined funds are available for those moves. At a minimum, the PHA policy must address:

- How the PHA will inform families of the PHA’s local policy regarding moves denied due to lack of funding; i.e., information contained in briefing packets or in a letter to the tenant at the time the move is denied.
- How long the family’s request to move will be open for consideration and how the PHA will notify families with open requests when funds become available.

A PHA may not deny a family’s request to move to a higher cost unit or a higher cost area because it wishes to admit additional families from its waiting list into its voucher program, regardless of whether it has unit months available (UMA) to do so. If the PHA denies a family’s request to move, it may not subsequently admit any additional families to its voucher program until the PHA has followed the policy as described above.

If a PHA approves a family’s request to move then subsequently experiences a funding shortfall, the PHA may only retract the voucher if the family would be allowed to remain in their current unit. If the family cannot remain in the unit, (e.g. family has already vacated the unit or family

has already notified the owner of their intent to vacate and the owner has re-let the unit to another family) the PHA must not retract the voucher. This requirement applies to moves both within the PHA's jurisdiction and to portability moves.

An initial PHA may not terminate a portability voucher under a billing arrangement with a receiving PHA for insufficient funding since the initial PHA is not a party to the HAP contract.

**Penalties for Improperly Denying Requests For Insufficient Funding**

In general, if HUD determines that a PHA did not follow the policies established in this Notice and has improperly denied a family's request to move due to insufficient funding (e.g., sufficient funding was in fact available at the time of the family request to support the move; PHA failed to comply with request for additional information to support the insufficient funding from the Field Office), HUD may impose a sanction on the PHA, which may include a reduction in the PHA's administrative fee of up to 10 percent for the two quarters following the quarter that HUD identified the improper denial, taking into consideration the circumstances of the particular case. The Office of Public Housing in the HUD Area Office with jurisdiction over the PHA will inform the PHA by letter and will send a copy to the HUD Financial Management Center (FMC) and the Financial Management Division (FMD) to effectuate the fee reduction.

This general policy for improperly denying the family's request to move under 24 CFR 982.314(e)(1) does not in any way restrict HUD from exercising additional remedial actions or imposing sanctions in the event the PHA is denying requests by families to move under portability in violation of program requirements.

**Portability and Project-based Assistance**

In accordance with 24 CFR 983.2(b)(2), provisions on portability do not apply to the PBV program. A family that is porting into a receiving PHA's jurisdiction may only receive a tenant-based voucher or homeownership assistance. In order for a tenant based voucher holder to be housed in a PBV unit, the family would have to apply to the receiving PHA's PBV program and give up their tenant-based voucher prior to being housed in the PBV unit.