

To: Housing Justice Network
From: NHLP Staff
Date: August 14, 2025
Re: **Voucher Funding Shortfalls**

Every year HUD receives annual appropriations from Congress. HUD obligates funds to Public Housing Agencies (PHAs) in accordance with the formula set forth in the Appropriations Act. Each PHA must manage and monitor their program within the amounts allocated. The Appropriations Act typically provides shortfall funding for HUD to provide to PHAs. Although this funding is limited, it is intended to help PHAs that—despite taking reasonable cost savings measures—would otherwise have to terminate families from the program due to insufficient funds.

On May 14, 2025, HUD published Notice PIH 2025-13 that provides guidance related to shortfall funding eligibility and shortfall policies.¹

Per HUD’s guidance, PHAs concerned about a potential funding shortfall should contact HUD. Upon confirmation from HUD’s Shortfall Prevention Team of a shortfall, the PHA must:

1. Cease issuing new vouchers as of the date the PHA is notified of the shortfall.
 - Exceptions: (1) participants moving to a new unit; (2) most HUD-Veterans Affairs Supportive Housing vouchers, Tenant Protection Vouchers, Special Purpose Vouchers (including Family Unification Program and Fost Youth to Independence vouchers), and stability vouchers; (3) allow applicants to move into PBV units for the PHA to meet its contractual PBV obligations; (4) litigation vouchers; and (5) vouchers awarded under the Community Choice Demonstration. In its May 14, 2025 notice, HUD reserved the right to consider additional exceptions on a case-by-case basis.
2. Cease absorbing portable vouchers as of the date the PHA is notified of the shortfall.
3. Work with the Shortfall Prevention Team to develop an Action Plan containing additional cost savings measures specific to the PHA.²
4. Implement—within the timeframes specified by the Shortfall Prevention Team—all cost saving measures in the PHA’s Action Plan.
5. Apply for shortfall funding.

¹ PIH 2025-13, Appendix B.

² *Id.* at 43, fn. 36 (HUD notes that PIH 2011-28 provides detailed recommendations for cost-savings measures that will likely be included in the PHA’s Action Plan). *See also, e.g.*, Case Study: Preventing Shortfall During a Pandemic – HUD Example at 2 (sample Action Plan), <https://files.hudexchange.info/course-content/pha-best-practices-during-covid-19-webinar-series-preventing-shortfall/Preventing-Shortfall-During-a-Pandemic-HUD-Example-PHA-Best-Practices-Preventing-Shortfall-in-HCVs-Case-Study.pdf>.

In its May 14, 2025 guidance, HUD reserved the right to require the PHA to further suspend leasing if necessary.³ HUD also reserved the right to require PHAs to rescind recently issued vouchers, but HUD directed PHAs not to take this step unless required to do so by HUD.⁴

If a PHA fails to fully comply with the required actions in the notice it receives from the Shortfall Prevention Team or with the additional cost saving measures in the PHA's Action Plan, HUD may:

1. Reject the PHA's shortfall funding application.
2. Reduce or rescind the PHA's shortfall funding award.
3. Sanction the PHA (administrative fee sanctions).
4. Require the PHA to fully cover the HAP costs for unallowable new admissions.⁵

In some cases, even PHAs not in a shortfall are taking immediate measures to reduce spending in the face of future budget cuts. This memo provides guidance to advocates working with PHAs that are making policy changes in response to potential cuts, both required by HUD due to funding shortfalls and using the PHA's discretion to implement cost-saving measures. It is by no means an exhaustive list of advocacy strategies that can be utilized in the face of PHA funding shortfalls. We hope that local advocates continue to share with us ideas and tools to maximize the impact of the voucher program.

I. Know Your PHA Budget

What is the budget outlook of your PHA?

Request Financial Documents Using a State Public Records Act Request

Understanding the PHA's budget can help you assess the financial state of the PHA and prepare for different scenarios. The easiest way to obtain this information is to ask for the PHA's financials. NHLP has prepared a sample public records request for advocates to use to obtain relevant documents.⁶

Review HUD's VMS Data and Two-Year Projection Tool

HUD's Voucher Management System (VMS) also contains a lot of relatively up-to-date data such as the number of new vouchers issued but not leased up (most current data available as of the date of this memo is Jan-Mar. 2025). On a monthly basis, PHAs submit data to VMS. To find VMS data for your PHA, go to the HUD Voucher Program Support Division page⁷ and scroll down for a link to the most recent quarterly VMS data. Once you open the spreadsheet, you can search for your PHA.

³ PIH 2025-13 at 43.

⁴ *Id.*

⁵ *Id.*

⁶ You can find a link to the sample request on NHLP's website here: <https://www.nhlp.org/wp-content/uploads/NHLP-Sample-Records-Request.pdf>.

⁷ HUD, Housing Voucher Program Support Division, <https://www.hud.gov/helping-americans/public-indian-housing-program-support-division>.

In determining whether a PHA has a shortfall and the amount of funds needed to resolve the shortfall, the Shortfall Prevention Team uses VMS data as well as HUD's HCV Two-year Projection Tool.⁸ In conducting these calculations, the Shortfall Prevention Team also projects the PHA's HAP expenses based on the PHA's current leasing and expenses (taking into consideration attrition based on actual attribution data),⁹ and factors in the PHA's overall finances,¹⁰ including the PHA's reserves, projected HAP costs for vouchers issued as of the date the Shortfall Prevention Team notified the PHA of the shortfall (taking into consideration the PHA's success rate and average time between issuance and lease-up), and other PHA resources available to the PHA¹¹.

Check out HUD's Voucher Dashboard

HUD's Housing Choice Voucher Program dashboard is also a good resource for advocates.¹² The dashboard is typically updated monthly and reflects data PHAs reported to HUD approximately two months ago (most current data available as of the date of this memo is May 2025).

The dashboard shows each PHA's budget overview, including total monthly HAP expenditures to date, budget authority, and total reserve balances. Notably for purposes of identifying PHAs in shortfall status, the dashboard also shows each PHA's leasing potential (except for MTW PHAs). The leasing potential is the number of additional families the PHA could serve beyond new admissions from program attribution or expected new admissions from the number of vouchers on the street.¹³ If the leasing potential is 40, that is the number of additional families the PHA could serve for 12 months, while maintaining the level of reserves HUD protects from offsets (i.e., 4% of a PHA's 2025 renewal funding eligibility for a PHA with 500 or more authorized vouchers, 6% for a PHA with 250-499 authorized vouchers, and 12% for a PHA with fewer than 250 authorized vouchers).¹⁴ A leasing potential of 0 is indicative of a projected or actual funding shortfall.

The dashboard does not calculate the leasing potential for MTW agencies due to MTW agencies' funding flexibilities. All PHAs receive HCV funds through a distinct funding stream from HUD. But MTW PHAs can maintain those funds in a pool with other funds and direct those funds to any MTW-eligible purpose. A MTW PHA's HCV funds are still tracked and traceable. Accordingly, with financial records, advocates can determine how much voucher funds MTW PHAs are actually spending on vouchers and other uses of those funds.

⁸ PIH 2025-13 at 44; HUD, HCV Utilization Tools - HCV Two-Year Tool Guide, <https://www.hud.gov/helping-americans/public-indian-housing-hcv-tools>.

⁹ PIH 2025-13 at 44.

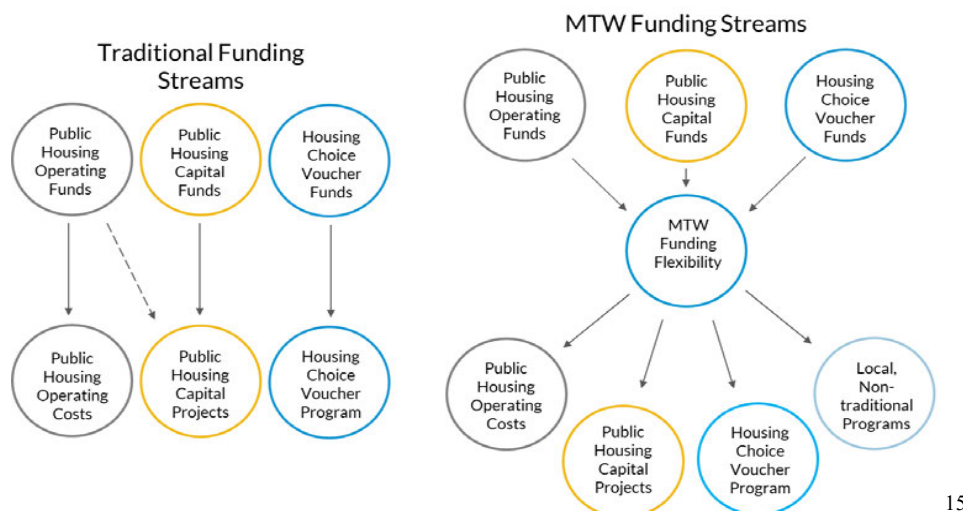
¹⁰ *Id.* at 44-46.

¹¹ *Id.* at 46, citing PIH 2013-28 and 24 CFR 982.155(b)(1).

¹² HUD, HCV Data Dashboard, <https://www.hud.gov/helping-americans/public-indian-housing-hcv-dashboard>.

¹³ HUD, Leasing Potential, https://www.hud.gov/sites/dfiles/PIH/documents/hcv_dashbd_whatisleasingpotential.pdf.

¹⁴ *Id.*; see also, e.g., PIH 2025-13 at 3, 5.



15

Given MTW PHAs' funding flexibilities, including their ability to shift funds across funding streams when faced with a projected budgetary issue,¹⁶ MTW PHAs are less susceptible, and less likely to experience a funding shortfall.

Advocates in MTW PHA service areas can also obtain information from HUD's MTW HCV Utilization dashboard.¹⁷ That dashboard contains information on MTW expenditures, HAP-eligible expenses, and how MTW agencies have committed and obligated their HCV funds and reserves. Like the HCV dashboard, the data in this dashboard reflects data PHAs reported to HUD (most current data available as of this memo date is May 2025).

Does the PHA have administrative reserves that could help cover a shortfall?

The best way to find out how much a PHA has in administrative reserves is to request that information directly from the PHA. Administrative reserves are also publicly available on HUD's VMS website, listed in the spreadsheet as "Unrestricted Net Position (UNP) as of the Last Day of the Month." However, note that HUD warns against relying on this data because (1) HUD's methodology can misrepresent the actual amount in reserves at any given time and (2) reporting by PHAs is often inaccurate.

Note that administrative reserves may be used to fund many PHA activities and can be used to help paint an overall picture of the financial health of a PHA. That being said, the allowable use of reserves are restricted, so advocates should keep that in mind when looking at a PHA's budget.

¹⁵ Levy, Diane K., Leiha Edmonds, and David Long, *Moving to Work Agencies' Use of Funding Flexibility*, Cityscape: A Journal of Policy Development and Research 22 (3): 30 (2020).

¹⁶ See, e.g., *id.* at 31.

¹⁷ HUD, MTW HCV Utilization Dashboard, <https://app.powerbigov.us/view?r=eyJrIjoiaZDg1MjU5YmQyYzZkZC00NTczLWI3YzItZjhhMzc2MjZlNGVlIiwidCI6IjYxNTUyNGMlLTlyZTktNGJjZC1hODkzLTExODBhNTNmYzdiMjI9>.

Does the PHA have other sources of funding that can be used to off-set a shortfall?

It is important for advocates to know whether the PHA has other sources of funding that can be used to off-set a potential shortfall. For example, are there unrestricted federal funds available? What about state or local sources?

Before supplementing the HCV program with other funds, a PHA must seek HUD's approval.¹⁸ HUD will approve the use of outside funds only if the PHA has a HUD-confirmed funding shortfall and needs to use outside funding to protect current participants from termination of assistance.¹⁹ PHAs cannot use the outside funds to place additional families in the program, to enter into new PBV contracts, or to free up HCV resources to add additional families to the program.²⁰

II. Understand the Proposed Policy Changes and the Process Necessary to Implement Them

What does the PHA Administrative Plan say about funding shortfalls? Is the PHA following its Plan?

To understand what steps a PHA may take if there are insufficient HAP funds to assist current voucher holders, advocates should review the Administrative Plan. The Administrative Plan must cover all of the PHA's local policies for administration of the program and the PHA must comply with the policies in its Administrative Plan.²¹ HUD requires PHAs to adopt policies regarding funding shortfalls and how they will deal with the problem in the event that families must be terminated due to insufficient funding.²² Each PHA's insufficient funding policy should also describe how the PHA will resume assistance for the impacted households (i.e., resumption-of-assistance policies).²³ These policies must comply with the PHA's obligation to affirmatively further fair housing.²⁴

Is the PHA following the proper procedure to implement the change? If not, did the PHA request a waiver from HUD?

Before taking cost-saving measures, the PHA must follow both its Administrative Plan and proper regulatory procedures. For example, under HUD regulations, reduced payment standards can only be applied to current participants at the second annual recertification and only if the participants have received proper notice.²⁵ A PHA can request that HUD waive the requirement,

¹⁸ PIH 2025-13 at 24; PIH 2013-28 at § 7.

¹⁹ PIH 2013-28 at §§ 5-7.

²⁰ *Id.* at § 7.

²¹ 24 C.F.R. § 982.54(a), (b), (d)(26).

²² PIH 2011-28 at § 5; 24 C.F.R. § 982.54(d)(26).

²³ PIH 2011-28 at § 5 (terminations of assistance); PIH 2016-09 at 18 (denials of requests to move).

²⁴ PIH 2011-28 at § 5, citing 24 C.F.R. 982.53(c) and 24 C.F.R. 903.7(o).

²⁵ 24 C.F.R. § 982.505(c)(3); *see also* *Nozzi v. Hous. Auth.* (9th Cir. 2015) 806 F.3d 1178, 1192.

but the PHA cannot take the action until the waiver is granted.²⁶ If a PHA has requested a HUD waiver, advocates should request a copy of the waiver request which should, at a minimum, include the calculation the PHA used to arrive at the projected shortfall, the cost-savings measures the PHA has already taken or will take in the future, and an analysis of the impact the reduction will have on a family's ability to lease units throughout the PHA's jurisdiction.²⁷

In addition, certain policy changes may be considered a significant amendment to the PHA's Administrative Plan and are therefore subject to the tenant participation process. You can find your local PHA's definition of "significant amendment" in the 5-year or Annual Plan. Advocates have successfully challenged PHAs that took action prior to properly revising its plans. In one case, a court ruled there was sufficient evidence to show that a change in the minimum rent or subsidy standard, as a result of a shortfall, is a significant amendment or modification to the PHA plan, triggering the public participation process.²⁸

What cost-savings steps can the PHA take? Will the steps harm participant families?

Not all policy changes impact participant and applicant families the same. NHLP assembled a list of PHA cost-saving measures for the voucher program and organized them based on legality, and notes which policies are projected to have a negative impact on families.²⁹

Before implementing any cost-saving measure, the PHA should have "carefully consider[ed] the impact such actions will have on program applicants and participants."³⁰ If the PHA's assessment showed that the action would "adversely impacts program participants, particularly a family's rent burden," HUD's recommendation is for the PHA to first consider other actions.³¹

For all proposed changes, advocates should ask for the PHA's records relating to how it considered the impact the changes would have on program applicants and participants. Advocates should also ask for information and data on how the policy will reduce costs, what the dollar savings are to the program, and the dollar amount that the PHA anticipates it will need to save to stay within budget. In general, there are two types of program changes that a PHA may make to reduce costs. There are program changes that will reduce the cost of the program per family and changes that will reduce administrative burdens/costs.

Program changes that reduce costs per family. Before making program changes that reduce the cost per family, a PHA ought to determine the turnover rate. The turnover rate is the percentage or number of families who give up or lose their vouchers monthly/yearly. For some PHAs it may be that the turnover rate if acknowledged and managed will eliminate or minimize the need

²⁶ PIH 2011-28 at § 4(j); HUD HCV Program Guidebook, Payment Standards, § 5.2 (June 2025) (Note waiver option not provided in updated chapter).

²⁷ *Id.*

²⁸ *Rogers v. Housing Authority of Prince George's County*, 2015 U.S. Dist. LEXIS 119741/ 2015 WL 5287128 (D. Md. Sept. 8, 2015).

²⁹ You can find a link to the chart on NHLP's website here: <https://www.nhlp.org/wp-content/uploads/NHLP-Shortfall-Chart-2025.pdf>.

³⁰ PIH 2011-28 at 1.

³¹ *Id.* at 2.

to make any drastic changes to the program. It is also important to determine if the PHA has any reserves and the amount and the restrictions on such reserves (see above).

Streamlining the administration of the program. To address the cuts to a PHA’s administrative fees, a PHA could streamline the administration of the HCV program, which would also cut cost. There are several HUD notices that provide ideas on how to streamline the program.³² Because these policies are discretionary, advocates should urge their adoption. Advocates can also think outside the box to suggest other ways to streamline the program without harming tenants. For example, advocates could look to actions HUD has historically recommended to insolvent PHAs in the context of public housing, including restructuring the agency’s organization and staff, and renegotiating contracts with workforce and/or vendors.³³ Advocates can request this information from their PHA.³⁴

Advocates should also ensure the PHA is administering its HCV program in compliance with HOTMA,³⁵ which made several amendments to the HCV program, and related regulatory changes that “are intended to reduce the burden on public housing agencies...”³⁶ NHLP has prepared a quick reference guide to HOTMA implementation that covers a number of areas including inspections, income and recertification, and asset limits.³⁷

Engaging in advocacy with your PHA around HUD-recommended measures. If a PHA proposes a cost-saving measure that adversely impacts households in the program, particularly their rent burden, advocates should remind the PHA that HUD strongly recommends the PHA first consider other options.³⁸ Advocates can assist their PHA by identifying additional cost-saving measures, including measures recommended by HUD.

For example, HUD has recommended that PHAs increase the success rate of voucher holders because a high success rate reduces a PHA’s administrative burden by resulting in fewer briefing schedules, HQS inspections, and rent reasonableness determinations.³⁹ To increase success rates, HUD has suggested PHAs consider extending search times and ensuring adequate payment standards.⁴⁰ If a PHA is planning to reduce payment standards as a cost-saving measure, advocates should discuss with the PHA its projected cost savings and whether the PHA offset those projected savings by the increased administrative costs the PHA is likely to

³² See, e.g., PIH 2011-28; PIH 2012-15 at 6, rescinded by PIH 2023-27 (Noting numerous provisions in PIH 2012-15 are no longer applicable due to more recent notices and HOTMA, but PIH 2012-15 “is still useful for PHAs who are streamlining their programs...”); PIH 2013-3 (temporary provisions through March 2014).

³³ PIH 2021-12 at 10.

³⁴ See link to sample public records request, note 4 *supra*. Annually, PHAs—including MTW PHAs—must report executive compensation to HUD. (PIH 2023–05, referencing HUD Form 52725; see also 90 Fed. Reg. 20312 (July 14, 2025).)

³⁵ Pub. L. 114–201, 130 Stat. 782 (Jul. 29, 2016).

³⁶ 89 Fed. Reg. 38224 (May 7, 2024).

³⁷ You can find a link to NHLP’s quick reference guide here: <https://www.nhlp.org/wp-content/uploads/HOTMA-Reference-Guide.pdf>.

³⁸ See, e.g., HUD, HCV FAQ - In what ways can Public Housing Agency (PHA) reduce costs? (January 2022), available online at <https://www.hudexchange.info/faqs/4032/in-what-ways-can-a-public-housing-agency-pha-reduce-costs/>; PIH 2011-28 at 1-2.

³⁹ PIH 2012-15 at 6, rescinded by PIH 2023-27 (Noting numerous provisions in PIH 2012-15 are no longer applicable due to more recent notices and HOTMA, but PIH 2012-15 “is still useful for PHAs who are streamlining their programs...”)

⁴⁰ *Id.*

incur.

To reduce program costs, HUD also recommends that PHAs ensure they are subsidizing only reasonable rents.⁴¹ Owners may not charge higher rents for assisted units than for comparable unassisted units, and rent increases must comply with any state or local rent control limits.⁴² In issuing this cost-saving recommendation, HUD reminded PHAs that they do not have to wait until a triggering event, such as a HAP contract anniversary, to review rents and reduce them if warranted.⁴³ For example, PHAs can revisit previous rent reasonableness determinations.⁴⁴ After a PHA provides an owner written notice of an unreasonable rent, rents may be reduced as early as the first of the following month.⁴⁵ In addition to serving as a cost-savings to PHAs, reducing unreasonable rents may also reduce the voucher household's rent burden (particularly if the unreasonable rent exceeded the payment standard).

Advocates are in the best position to recommend other cost-saving measures unique to the jurisdiction. For example, for a PHA in an area subject to state or local rent caps, automating a portion of the rent reasonableness process may help ensure the PHA is not mistakenly approving—and then subsidizing with limited voucher funds—rent increases that exceed the rent cap. This is a good opportunity for advocates to remind PHAs of their obligation to deny rent increase requests that exceed any rent caps, to avoid squandering public funds on illegal rent increases.⁴⁶ Automating this portion of the PHA's rent reasonableness process may not only protect against human error, but may save staff time that would otherwise be spent comparing the rent increase request to the maximum allotted rent permitted under the state or local rent cap.

Advocates are uniquely positioned to assist PHAs by reviewing existing policies to identify additional ways a PHA can cut costs to continue assisting families.

Do you have a contact at your local HUD field office?

If you have a friendly contact at your local HUD field office, it might help to call and discuss the PHA's budget outlook. If the PHA is implementing cost-saving measures that are too drastic, for example, the HUD field office might be able to intervene.

III. If HUD Requires the PHA to Adopt Policies Due to a Projected Shortfall, Make Sure the PHA is Following HUD's Guidance

Does the PHA's action apply to applicants or participants?

⁴¹ Note that PHAs must ensure rents are reasonable regardless of whether the PHA is experiencing a financial difficulty. But under HUD recommendations, PHAs should take more proactive steps within the context of this requirement. (PIH 2011-28 at 2-3; *see also* PIH 2025-13 fn. 3 (referencing PIH 2011-28).)

⁴² *Id.*; *see also* 24 C.F.R. §§ 982.507(b), 982.509.

⁴³ PIH 2011-28 at 3. (PIH 2025-13 fn. 3 expressly references PIH 2011-28.)

⁴⁴ *Id.*; *see also, e.g.*, Sample Action Plan from HUD Case Study, note 2 *supra*.

⁴⁵ PIH 2011-28 at 3.

⁴⁶ HUD HCV Program Guidebook, Rent Reasonableness, §§ 1, 2.4.1 (September 2020). Per HUD, “[i]f a PHA approves rents that are too high, government funds are wasted and limited housing subsidies are squandered.” (*Id.* at § 1.)

An applicant family is defined by HUD as a family that has applied for admission to the voucher program but is not yet a participant.⁴⁷ A participant family is a family that has been admitted and is currently assisted in the PHA program.⁴⁸ A family becomes a participant on the first day of the initial lease term (the effective date of the first HAP contract).⁴⁹

HUD's guidance is clear that in the case of a shortfall, PHAs should stop issuing vouchers to *applicants* but allow current *participants* to move.⁵⁰ Participant families who were issued a voucher to move to a different unit should still be able to move.⁵¹

Denying moves based on insufficient funding. While HUD's shortfall funding guidance directs PHAs to honor move vouchers,⁵² under 24 C.F.R. § 982.354(e)(1) PHAs can deny moves based on insufficient funds.

Upon determining it is necessary to deny moves because of insufficient funds, the PHA must notify the local HUD office within 10 business days and provide a financial analysis that demonstrates insufficient funds, a statement certifying the PHA has ceased issuing vouchers, and a copy of the PHA's move denial policy.⁵³ If HUD determines the PHA improperly denied moves on this basis, HUD may impose sanctions on the PHA and the PHA must immediately inform any affected families as well as process the move.⁵⁴

For a PHA to deny a move based on insufficient funds, all of the following must apply:

1. The proposed move must be to a higher cost unit (for moves within the PHA's jurisdiction) or to a higher cost area (for portability moves).
2. The receiving PHA is not absorbing the voucher (for portability moves).
3. The PHA would be unable to avoid termination of participants at current funding levels.⁵⁵

But if a PHA has approved a participant family's request to move (either within or outside of the PHA's jurisdiction), the PHA may only rescind the voucher—based on insufficient funds—if the family is able to remain in the current unit.⁵⁶ If the family gave notice and their current apartment was re-rented, for example, the PHA has to provide the family with a moving voucher. However, if the family is moving outside the PHA's jurisdiction, the PHA can deny

⁴⁷ 24 C.F.R. § 982.4.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ PIH 2025-13 at 42 (Appendix B).

⁵¹ For years, HUD has excluded move vouchers (issued to current participants) from the vouchers PHAs were required to suspend issuing to be eligible for shortfall funding. (PIH 2024-21 at 4; PIH 2023-07 at 47 (Appendix E); PIH 2022-14 at 44 (Appendix E); PIH 2021-10 at 45 (Appendix E); PIH 2020-04 at 37 (Appendix D); PIH 2019-08 at 32 (Appendices D, E); PIH 2018-08 at 31 (Appendix B); PIH 2018-05 at 2; 2017-10 at 4, 25; PIH 2017-07 at 2.)

⁵² PIH 2025-13 at 42.

⁵³ 24 C.F.R. § 982.534(e)(1); PIH 2016-09 at 17; PIH 2012-42 at 14; HUD HCV Program Guidebook, Moves and Portability, § 3.3.1 (May 2019).

⁵⁴ PIH 2016-09 at 18-19; HUD HCV Program Guidebook, Moves and Portability, § 3.3.4 (May 2019).

⁵⁵ *Id.*

⁵⁶ PIH 2016-09 at 15; HUD HCV Program Guidebook, Moves and Portability, § 3.3 (May 2019).

the move if the move is to a higher cost area and the PHA is not absorbing the voucher.⁵⁷ But the family must be allowed to lease a new unit.⁵⁸

A PHA may only proceed in a manner that complies with its Administrative Plan, which must contain policies that address denial of family moves based on insufficient funding.⁵⁹ At a minimum, the PHA's policy must address how the PHA will inform families of the policy, 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 (which should be no later than January 1st of the following calendar year).⁶⁰

In the case of applicants, there may be state law challenges available such as contract claims based on detrimental reliance, that preclude a PHA from rescinding a voucher after the family has given notice and is unable to return to their unit.

Terminations based on insufficient funding. PHAs should not be terminating HAP contracts based on insufficient funding. After all, the shortfall funding process exists for precisely this reason – to prevent terminations based on insufficient funds.⁶¹

Under 24 C.F.R. § 982.454, PHAs can terminate assistance to participants based on insufficient funds, but only in very limited circumstances. Before terminating existing contracts on this basis, PHAs must take several mandatory steps including explicitly considering the impact terminations will likely have on program applicants and participants, identifying alternative sources of unrestricted non-federal funding that may be available to prevent terminations, and issuing prior written notice to HUD identifying all cost measures taken as well as the number of terminations planned and proposed termination date.⁶²

Only if each of those conditions are met could a PHA proceed with termination of HAP contracts based on insufficient funding, but only in a manner that complies with the PHA's Administrative Plan.⁶³ If tenants are being terminated on this ground, advocates should look to

⁵⁷ PIH 2016-09 at 17.

⁵⁸ *Id.* at 15.

⁵⁹ PIH 2016-09 at 16; HUD HCV Program Guidebook, Moves and Portability, § 3.3.3 (May 2019).

⁶⁰ *Id.*

⁶¹ See e.g., PIH 2025-13 at 42 (“The 2025 Act provides up to \$200 million of the HCV HAP Set-aside...One of the eligible categories under...the HCV...HAP Set-aside is for PHAs that, despite taking reasonable cost savings measures as determined by the Secretary, would otherwise be required to terminate participating families from the program due to insufficient funding.”)

⁶² Under the current insufficient funding regulation, a “PHA may terminate the HAP contract if the PHA determines, *in accordance with HUD requirements*, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.” (24 C.F.R. § 982.454 (emphasis added).) Under HUD requirements, a PHA may only terminate a HAP contract on this basis if: (1) the PHA determines—after having considered “all of its available budget authority (which includes unspent prior year HAP funds in the PHA's NRA account)” —that funding under the Consolidated Annual Contributions Contract (CACC) is insufficient to support continued assistance for families in the program; (2) the PHA has “carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants[.]” and (3) the PHA issues written notice to the HUD field office and its financial analyst at the Financial Management Center prior to issuing notices of termination, with the notice including “all measures taken to date to reduce or eliminate the shortfall and the number and date(s) of proposed termination.” (PIH 2011-28 at 6-7.)

⁶³ 24 C.F.R. § 982.54(c).

the PHA's Administrative Plan. For example, while the regulations do not specify how much notice a household is entitled to before assistance is terminated based on insufficient funding,⁶⁴ the Administrative Plan's insufficient funding policy may provide a notice period. If the PHA's insufficient funding policy is silent on how much notice will be given, advocates should look to the Administrative Plan's default notice provision. Also, while it is unlikely that Administrative Plans will expressly provide for informal hearings for this type of termination given the regulations,⁶⁵ households still have basic due process rights.⁶⁶ If there is a factual dispute, a household may be entitled to an informal hearing before termination of the HAP.⁶⁷

Regarding PBVs, under 24 C.F.R. § 983.261, a family residing in a PBV unit can exercise their right to a tenant-based voucher after a year of occupancy, at which point "the PHA must offer the family the opportunity for continued tenant-based rental assistance" in accordance with the PHA's Administrative Plan. However, as HUD's guidance acknowledges, PHAs in shortfall status generally do not have available vouchers.⁶⁸

IV. Other Considerations

Did the PHA rescind emergency transfer vouchers meant to protect survivors of domestic violence?

VAWA provides important protections for survivors of domestic violence. In some cases, an applicant or participant may be issued an emergency transfer voucher to facilitate a move away from an abuser.

Advocates should be sure that PHAs are not implementing policies that restrict applicants' and tenants' rights to move as a result of domestic violence.

Did the PHA provide reasonable accommodations for people with disabilities?

Applicants and participants are entitled to reasonable accommodations when it is necessary as a result of their disability. A PHA's policies should not interfere with this right. A PHA may argue that it is a financial burden to consider accommodations, given a funding shortfall. However, every accommodation must be considered on a case-by-case basis.

Advocates have successfully argued that blanket policies that place an additional burden on

⁶⁴ 24 C.F.R. § 982.454.

⁶⁵ 24 C.F.R. § 982.555.

⁶⁶ *Mathews v. Eldridge* (1976) 424 U.S. 319.

⁶⁷ For example, in the insufficient funding provisions of administrative plans, a number of PHAs provide the order by which the PHA will terminate HAP contracts or the criteria the PHA will use to identify HAP contracts to terminate. If a household receives a notice of termination on grounds that the household falls into one of the plan's priority categories (or meets the criteria set forth in the plan) and that household disagrees that it qualifies as a household in that category (or that meets the necessary criteria), then that household may have a good faith contention that the termination is improper and a right to a hearing before their HAP contract is terminated.

⁶⁸ *Id.*

people with disabilities may be illegal under antidiscrimination laws.⁶⁹ In one case, due to a funding shortfall, a new subsidy standard was applied to all voucher participants, reducing the number of bedrooms allocated per family regardless of whether the family had requested an accommodation for an extra bedroom. Because people with disabilities were unfairly impacted by the seemingly neutral policy, one court found sufficient evidence that a judgment could be granted in favor of the voucher tenants with disabilities on the reasonable accommodation claims.

Do the policy changes have a disproportionate impact on people of a protected class or perpetuate segregated housing patterns?

In addition, it is important to consider whether a proposed policy change or implementation of an existing policy—such as denying moves to higher cost areas in the event of insufficient funding—will have a disparate impact on a protected class or perpetuate segregated housing patterns. In order to perform the disparate impact analysis, advocates can request data from the PHA on which families are affected by a particular policy change. If the PHA is unwilling to provide the data, consider making a public records act request under state law. Prior to implementing any cost-savings measure, the PHA should have considered the impact of each action, including the impact on applicant and participant families.⁷⁰

Unlike traditional disparate impact claims, which require analysis of the effects of the challenged policy on a protected class, segregative effect claims center on how the challenged policy affects residential segregation in a specific geographic area. While traditional disparate impact claims can be based on various data sources, segregative effect claims are generally based on census data. Evidence can also include dissimilarity indices and geographic information system mapping.

In addition to discriminatory effect claims under the Fair Housing Act, advocates should consider state law based claims. For example, while the Fair Housing Act's shifting-burden framework contains three stages,⁷¹ California's Fair Employment and Housing Act contains two stages⁷² and the defendant must establish no "feasible alternative practice" exists that would accomplish the purpose with a less discriminatory effect⁷³.

V. Make Sure the PHA Applies for Set-Aside Funds

The Appropriations Act provides shortfall funding for HUD to provide to local PHAs. In order to be eligible, PHAs must take the steps outlined in HUD's Notice PIH 2025-13. The notice also explains the types of set-aside funds that HUD plans to make available. In the case of a shortfall, advocates can work with their local PHAs to guarantee that the PHA applies for the

⁶⁹ *Huynh v. Harasz*, 2016 WL 2757219 / 2016 U.S. Dist. LEXIS 63678 (N.D. Cal. May 12, 2016).

⁷⁰ PIH 2011-28 at 1-2. ("In determining which actions to take, a PHA should carefully consider the impact such actions will have on program applicants and participants... Cost-savings measures are optional and have varying degrees of impact on applicant and participant families. The impact of each action should be considered prior to implementation.")

⁷¹ 24 C.F.R. § 100.500.

⁷² Cal. Code Regs., tit. 2, § 12061.

⁷³ Cal. Code Regs., tit. 2, § 12062(b)(4); *see also* *Martinez v. City of Clovis* (2023) 90 Cal. App. 5th 193, 270-271.

set-asides funds so it can continue to provide assistance to as many families as possible.

VI. A Note on Public Housing

Shortfalls for the public housing operating fund will also create problems for PHAs. Because PHAs have many fixed costs including utilities, it will mean that the amount of “discretionary” funds for maintenance and repairs are extremely limited. For public housing, PHAs should immediately implement cost-saving policies such as streamlining program administration.

There are other consequences to severe cuts for public housing programs such as the inability of a PHA to convert public housing units in accordance with a RAD application, because funding for the development will be inadequate. Please contact NHLP staff if you are concerned about the public housing in your community due to funding shortfalls.