

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
David J. Gierlach
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON FINANCE

February 23, 2012 3:30 P.M.
Room 308, Hawaii State Capitol

In consideration of
House Bill 1884, House Draft 1
Relating to Public Housing

Honorable Chair and Members of the House Committee on Finance, thank you for the opportunity to provide you with comments regarding House Bill 1884 as amended by House Draft 1, relating to public housing.

The Hawaii Public Housing Authority (HPHA) is supportive of the initial draft of H.B. 1884, and while we support the intent expressed by the measure as amended, our agency has extremely grave concerns regarding the house draft.

As you know, the HPHA Executive Director (ED) compensation is **100% federally funded**. On August 26, 2011, HUD issued Notice PIH-2011-48 (HA). This Notice states that "previous HUD guidance and sound administrative practice call for PHAs to set executive compensation, particularly for executive directors, at a level within the range of that provided to comparable executive employees". In addition, this HUD Notice states that "PHA Boards... should **explicitly consider comparability in setting or making significant changes to the compensation of PHA executive directors**". In Section 7, the notice states if a "PHA 1- fails to comply with the PHA executive compensation reporting requirements or 2- fails to provide HUD, upon its request, with the specific information used by the PHA to conduct a comparability analysis in determining executive director compensation, **HUD may impose temporary monetary sanctions on the PHA**, pursuant to Section 6(j)(4) of the U.S. Housing Act of 1937."

In order to realize compliance with the Notice, the HPHA Board of Directors must be authorized to set ED compensation based on a comparability analysis as described in the Notice. Authorization would require an amendment to Section 356D-2, HRS, as the bill originally sought to achieve. H.B. 1884, as originally drafted, is necessary to amend

Section 356D-2, Hawaii Revised Statutes (HRS), to implement this HUD Notice that clearly includes, penalties for non-compliance. Section 6(j)(4) of the Housing Act states a number of potential sanctions available to HUD in situations of non-compliance, **from terminating all public housing assistance payments (which would be 86% of HPHA's funding)** to withholding or reducing assistance payments at the discretion of HUD. HUD could also order corrective action, which would require the statutory amendment being proposed by the original measure and HPHA will not be able to comply with the above referenced HUD Notice because it is now structured as session law directing the HPHA to conduct a comparability analysis and report the result to HUD. In this format, the measure fails to achieve its intent of providing the HPHA with the ability to comply with the Notice.

The importance of this measure as originally drafted is clear since it was also included in the Executive Administration's package as **House Bill 2544**. This can serve to assure you that the bill's language, intent, purpose, and background have been thoroughly vetted by the HPHA, its Board of Directors, its previous Executive Director, the Department of Human Services, the Department of the Attorney General, the Department of Budget & Finance, and the Governor's Office. All parties have weighed in on the bill and concurred that it is appropriate and consistent with the PIH Notice mandating the statutory change.

With respect to compliance, the Notice states in pertinent part: "It is important that all PHA Boards . . . understand and implement these requirements. By executing the PHA Certification of Compliance with PHA Plans and Related Regulations to accompany the PHA 5-year and annual PHA Plan, the Chairperson of the Board . . . will certify that the PHA has complied with the comparability analysis requirements, as they certify their compliance with all Federal requirements." **However, under the current statutory framework, the HPHA Board of Directors cannot base compensation upon a study nor certify that the executive director's compensation is based on a comparability analysis in compliance with this guidance.**

According to the Director of the Office of Public Housing for the HUD Honolulu Field Office, **all sections** of the HUD Notice, including the sanctions of Section 7, apply to HPHA since HPHA administers public housing and Housing Choice Voucher programs. HPHA is not exempt from complying with the Notice PIH 2011-48, and compliance requires that HPHA complete the following steps:

- a. Complete and submit annually Form HUD-52723, Operating Fund Calculation of Operating Subsidy.
- b. Complete and submit annually, with Form HUD-52723, Form HUD-52725, Schedule of Positions and Compensation.
- c. **Retain the appropriate information used by the Board of Directors to determine comparability of executive compensation and provide the information to HUD if requested.**
- d. **Certify, via the PHA Certification of Compliance with PHA Plan and Related Regulations to accompany the PHA 5-year and annual PHA**

Plan, that HPHA has complied with the comparability analysis requirements.

If the policy change could be made by administrative action, the HPHA would not have as much difficulty complying. However, HPHA is unique as compared to other states insofar as State law must be amended prior to compliance. For the HPHA Board of Directors to set the executive director's compensation based on a comparability analysis, the existing statutory phrase that requires the executive director to be paid a salary "not to exceed eighty-five per cent of the salary of the director of human resources development," must be removed, and replaced with language allowing the HPHA Board of Directors to conduct a comparability analysis prior to determining compensation. If the comparability analysis shows that the ED is overpaid then the Board will have to implement a pay reduction in order to comply. Please note that no matter what the outcome of the analysis is, this does not impact the State as the ED salary is federally funded.

The HPHA would like to note the statements made by the House Committee on Labor & Public Employment regarding the requested amendments. The Committee Report stated that the Committee "understands the grave concerns regarding the current language in this measure voiced by the Hawaii Public Housing Authority and the request that the original language of this measure be reinserted." Unfortunately, the Committee was unable to amend the measure to its original form due to lack of prior concurrence, but passed the measure "to continue discussions on this measure in the hopes that this matter may be addressed by the Committee on Finance."

The HPHA appreciates the opportunity to provide the House Committee on Finance with the agency's position regarding H.B. No. 1884 as amended by House Draft 1. We respectfully request the Committee to amend this measure to reflect the initial draft, and we thank you very much for your dedicated support.

Attachments (2)

Notice: PIH-2011-48 (HA), Issued August 26, 2011
House Bill 1884, unamended by House Draft 1



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

Special Attention of:

Public Housing Agencies;
Public Housing Hub Office Directors;
Public Housing Program Center Directors;
Public Housing Division Directors;
Regional Directors;
Field Office Directors

NOTICE: PIH-2011-48 (HA)

Issued: August 26, 2011

Expires: Effective until amended,
superseded, or rescinded

Cross References:

76 FR 23330

76 FR 40741

Subject: Guidance on Reporting Public Housing Agency Executive Compensation Information and Conducting Comparability Analysis

1. Background. As stated in recent public notices published in the Federal Register (i.e., 76 FR 23330 and 76 FR 40741), Public Housing Agencies (PHAs) that administer HUD-assisted public housing and housing choice voucher programs will be required to report to HUD annually the compensation provided to each of their five highest compensated employees, which will then be posted on HUD's website with job titles but without employee names. This will serve as a valuable transparency and oversight tool and a point of comparison for local PHA boards in determining appropriate compensation levels. To that end, all PHA boards will also be required to conduct comparability analyses when determining executive director compensation levels and certify that such an analysis has been performed.

2. Purpose. This notice: (1) provides information and guidance on Form HUD-52725 to be used by PHAs to report executive compensation and explains its required use; and (2) explains how PHAs are to conduct comparability analyses with respect to compensation provided to executive directors and certify that they have done so.

3. Applicability. The requirements in this notice apply to all PHAs that administer a public housing or housing choice voucher program, except for PHAs that operate a housing choice voucher program only and receive less than 50 percent of their funding for employees from HUD (this includes all HUD programs). Exempt PHAs are requested but not required to submit the compensation information.

4. Reporting PHA executive compensation using Form HUD-52725. In order to determine operating subsidy eligibility under the public housing operating fund formula, PHAs that operate HUD-assisted public housing are required to complete and submit annually a HUD-52723 form. Beginning with the next distribution of the HUD-52723, which is projected to

occur in September 2011, an additional form, the Schedule of Positions and Compensation form, HUD-52725, will be distributed along with the HUD-52723. PHAs that do not operate public housing units and operate a housing choice voucher program only will also receive HUD-52725 forms at the same time. Attached to this notice are a HUD-52725 form and the accompanying instructions, which are similar to the procedures utilized by the Internal Revenue Service to collect information on the five most highly compensated employees of non-profit organizations receiving federal tax exemptions.

5. Submissions. PHAs that operate public housing will be required to complete the HUD-52725 form and submit it with their HUD-52723 form to their appropriate Field Offices. PHAs that do not operate public housing units and operate a housing choice voucher program only should complete and return the HUD-52725 form to their Field Office, even though they do not complete the HUD-52723. These PHAs must follow the same submission schedule as PHAs that operate public housing.

6. Conducting comparability analysis in determining PHA executive director compensation and certifying compliance with this requirement. Previous HUD guidance and sound administrative practice call for PHAs to set executive compensation, particularly for executive directors, at a level within the range of that provided to comparable executive employees (see, for example, section 2-1 of PIH Handbook 7401.7 (1987)). Consistent with this principle, while providing maximum flexibility to PHAs, PHA Boards of Commissioners or equivalent authorities should explicitly consider comparability in setting or making significant changes to the compensation of PHA executive directors or other chief executive officers. As determined by each Board, appropriate data as to comparability may include, for example, independent compensation surveys and information concerning compensation provided to comparable PHA executive directors, to comparable state and local public officials, and to comparable private sector executives. The specifics are up to each Board, and while PHAs normally need not provide the specific information utilized for this purpose to HUD, they are required to retain this information and provide it to HUD if requested in a particular case. It is important that all PHA Boards of Commissioners and equivalent authorities understand and implement these requirements. By executing the PHA Certification of Compliance with PHA Plans and Related Regulations to accompany the PHA 5-year and annual PHA Plan, the Chairperson of the Board of Commissioners or other authorized PHA official will certify that the PHA has complied with the comparability analysis requirements, as they certify their compliance with all Federal requirements.

7. Penalty for PHA non-compliance. In the event that a PHA fails to: (1) comply with the PHA executive compensation reporting requirements; or (2) provide HUD, upon its request, with the specific information used by the PHA to conduct a comparability analysis in determining executive director compensation, HUD may impose temporary monetary sanctions on the PHA, pursuant to Section 6(j)(4) of the U.S. Housing Act of 1937. Additionally, PHAs that receive assistance under section 9 that fail to substantially comply with any provision of the U.S. Housing Act of 1937 relating to the public housing program, may have withheld "amounts allocated for the agency under section 8" (see 6(j)(4)(A)(v)), and may face other remedies pursuant to HUD regulation. These provisions apply to MTW as well as non-MTW agencies.

8. Paperwork Reduction Act. The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 2501-3520. The OMB control number is 2577-0272. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a currently valid OMB control number.

9. Further information. Inquiries about this notice should be directed to Donald J. Lavoy at (202) 402-6296 or Donald.J.Lavoy@hud.gov.

/s/

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

A BILL FOR AN ACT

RELATING TO PUBLIC HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 356D-2, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The authority shall employ, exempt from chapter 76
4 and section 26-35(a)(4), an executive director and an executive
5 assistant. The executive director shall be paid a salary ~~not~~
6 ~~to exceed eighty five per cent of the salary of the director of~~
7 ~~human resources development.]~~ that is determined by the board of
8 directors, considering, among other factors, compensation
9 provided to public housing authority executive directors with
10 comparable duties and responsibilities, to comparable state and
11 local officials, and to comparable private sector executives.

12 The executive assistant shall be paid a salary not to exceed
13 ninety per cent of the executive director's salary. The
14 authority may employ, subject to chapter 76, technical experts
15 and officers, agents, and employees, permanent or temporary, as
16 required. The authority may also employ officers, agents, and
17 employees; prescribe their duties and qualifications; and fix
18 their salaries, not subject to chapter 76, when in the



H.B. NO. 1884

1 determination of the authority, the services to be performed are
 2 unique and essential to the execution of the functions of the
 3 authority; provided that if the authority hires an officer,
 4 agent, or employee in a capacity not subject to chapter 76, the
 5 authority shall include in an annual report to the legislature,
 6 to be submitted not later than twenty days prior to the
 7 convening of each regular session, the position descriptions and
 8 reasons for hiring the personnel in a civil service exempt
 9 capacity. The authority may call upon the attorney general for
 10 legal services as it may require. The authority may delegate to
 11 one or more of its agents or employees the powers and duties it
 12 deems proper."

13 SECTION 2. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.
 16

INTRODUCED BY: *Rick P. Cusonilla*
Karen Casanova
L. A.
John M. ...
...
...

H.B. NO. 1884

Report Title:

Hawaii Public Housing Authority; Executive Director Compensation

Description:

Authorizes the Board of Directors of the Hawaii Public Housing Authority to set the executive director's compensation based on a comparability analysis and other factors.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



NEIL ABERCROMBIE
GOVERNOR



PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

February 23, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 1884, H.D. 1 - RELATING TO PUBLIC HOUSING**

Hearing: Thursday, February 23, 2012; 3:30 p.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of this bill is to require the Hawaii Public Housing Authority (HPHA) to conduct a study on the wages and compensation of other public housing authorities in the United States that are comparable in size to the Hawaii Public Housing Authority and comparable in duties and responsibilities to the Hawaii Public Housing Authority executive director and to require the Hawaii Public Housing Authority to submit a report to the United States Department of Housing and Urban Development on the wages and compensation of each of the five highest paid public housing authority executive directors of other comparable states or jurisdictions.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) does not support the changes in the H.D. 1 of this bill. The original language of this bill contained the language for determining the compensation for the executive director of the HPHA as required by the directives of the federal Housing and Urban Development agency (HUD).

AN EQUAL OPPORTUNITY AGENCY

The U.S. Department of Housing and Urban Development Office of Public and Indian Housing (HUD) issued Notice PIH-2011-48 (HA) on August 26, 2011, to provide guidance to PHAs on reporting executive compensation information and conducting comparability analyses when determining executive director compensation levels (HUD Notice). This HUD Notice directed a new requirement for PHA Boards of Directors to follow when determining executive director compensation. The HUD Notice requires PHA Boards of Directors to conduct a comparability analysis when determining executive director compensation levels, and to certify that such an analysis has been performed. The comparability analysis may include analyzing the compensation provided to comparable PHA executive directors, to comparable state and local public officials, and to comparable private sector executives. The HUD Notice further requires the Board of Directors to retain comparability information and provide it to HUD if requested, and to certify annually that the executive director's compensation has been determined by a process that includes a comparability analysis. With the current language of section 356D-2, the HPHA Board of Directors does not have the authority to set the executive director's compensation based on a comparability analysis if the analysis indicates that compensation should be more than eighty-five percent of the salary paid to the Director of Human Resources Development.

To comply with the HUD requirements regarding executive compensation, the DHS respectfully asks the Legislature to consider reinserting the original language of H.B. 1884 to avoid the federal penalties for the funding that supports the State's public housing program.

Thank you for the opportunity to provide this testimony.