

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

LATE

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

February 14, 2012 9:30 A.M.
Room 309, 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 Labor and Public Employment, 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 recent house draft. As you know, the HPHA Executive Director (ED) compensation is 100% federally funded and "[p]revious 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 . . . subject to HUD regulations." H.B. 1884, as originally drafted, is necessary to amend Section 356D-2, Hawaii Revised Statutes (HRS), to implement this HUD requirement. Pursuant to HUD Notice PIH-2011-48 (HA) of August 26, 2011 (Notice), the HPHA Board of Directors is required to "explicitly consider comparability in setting or making significant changes to the compensation of PHA executive directors or other chief executive officers." Therefore, in order to avoid incurring "temporary monetary sanctions on the PHA, pursuant to Section 6(j)(4) of the U.S. Housing Act of 1937" should the HPHA fail to "provide HUD, upon its request, with the specific information used by the PHA to conduct a comparability analysis in determining executive director compensation", the HPHA respectfully requests that H.B. 1884, H.D. 1 be amended to reflect its original purpose, intent, and language amending Section 356D-2, HRS.

In sum, the HPHA would respectfully request that the measure be revised from its current form 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. In order to achieve 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.

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.**

Further, as mentioned previously, the Notice provides that non-compliance with its terms may subject PHAs to severe monetary penalties. As stated in the Notice, if a PHA 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."

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.

The HPHA appreciates the opportunity to provide the House Committee on Labor and Public Employment 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 favorably, 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



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: *Jide P. Coronilla*
Karen Ayana *John M. ...*
L. A. *H. ...*



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.

