



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 28, 2012

TO: The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means

FROM: Patricia McManaman, Director

Subject: **S.B. 2806 – Relating to Public Housing**

Hearing: Tuesday, February 28, 2012; 9:00 a.m.
Conference Room 211, State Capitol

PURPOSE: The purpose of S.B. 2806 is to allow the Board of Directors of the Hawaii Public Housing Authority (HPHA) to set the salary of the Executive Director (ED) on the basis of several factors, including a comparability analysis considering the compensation provided to comparable Public Housing Agency (PHA) executive directors, to comparable state and local public officials, and to comparable private sector executives.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly supports this Administration bill. This measure will ensure that the HPHA is in conformance with HUD's Notice on August 26, 2011 (HUD Notice) to DHS. The HUD Notice requires all PHAs to report executive compensation information and conduct comparability analyses when determining ED compensation levels. The HUD Notice further requires the HPHA Board to retain comparability information and provide it to

HUD if requested, and to certify annually that the ED's compensation has been determined by a process that includes a comparability analysis. The current language of section 356D-2, Hawaii Revised Statutes (HRS), does not authorize the HPHA to set the ED's compensation based on a comparability analysis if the analysis. Rather, 356D-2, HRS, provides that the ED's compensation should be no more than eighty-five percent of the salary paid to the Director of Human Resources Development. HUD may impose severe monetary penalties for non-compliance with the HUD Notice.

By amending section 356D-2, HRS, the HPHA can do a comparability analysis and be in conformance with HUD regulations. The cost of obtaining comparability analyses will be minimal and paid for with federal funds. Any increase in ED compensation would be funded by federal funds.

Thank you for allowing us to comment on this bill.

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
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BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

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

SENATE COMMITTEE ON WAYS AND MEANS

February 28, 2012 9:00 A.M.
Room 211, Hawaii State Capitol

In consideration of
Senate Bill 2806
Relating to Public Housing

Honorable Chair and Members of the Senate Committee on Ways and Means, thank you for the opportunity to provide you with comments regarding Senate Bill 2806, relating to public housing.

The Hawaii Public Housing Authority (HPHA) is in strong support of this bill, which would amend Section 356D-2, Hawaii Revised Statutes, to authorize the HPHA Board of Directors to set the Executive Director's compensation based on a comparability analysis on an annual basis.

As you know, the HPHA Executive Director 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

ED's compensation is limited by reference to another position in the Administration, rather than by the HPHA Board of Directors. S.B. 2806 is necessary to amend Section 356D-2, HRS, to implement this HUD Notice that clearly includes, penalties for non-compliance.

Section 7 of the above-referenced Notice received from HUD refers to the U.S. Housing Act of 1937, Section 6(j)(4) regarding penalties. 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; unless passed unamended, the HPHA will not be able to comply with the above referenced HUD Notice.

The importance of this measure is clear since it was included in the Executive Administration's package after the bill's language, intent, purpose, and background were thoroughly vetted by the HPHA staff, 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**, including the sanctions of Section 7, of the HUD Notice apply to HPHA since HPHA administers public housing and Housing Choice Voucher programs. HPHA is not exempt from complying with the Notice.

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 appreciates the opportunity to provide the Senate Committee on Ways and Means with the agency's comments regarding S.B. 2806. We thank you very much for your dedicated support.

Attachment

Notice: PIH-2011-48 (HA), Issued August 26, 2011



**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