



Housing Choice Voucher E-Newsletter

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HUD's Policy on Unclaimed Tenant Utility Reimbursement Checks

Public housing agencies (PHAs) with utility allowances for tenant-paid utilities may at times disburse utility reimbursement checks to tenants. Checks may go unclaimed if tenants who were eligible for checks move from the last known address of the PHA and leave no forwarding address. At some point, the question arises how the PHA should comply with State escheat laws with regard to these checks.

Escheat laws (commonly known as unclaimed property laws) reunite lost or abandoned personal property—typically intangible property representing funds owed—with its rightful owner. States have a variety of escheat laws. PHAs must comply with the escheat laws in their own States.

On August 27, 2008, HUD issued a memo stating that it is HUD's policy for PHAs to report and turn unclaimed tenant utility reimbursement checks over to the State, if required by the State.

This policy stems from the fact that there is no Federal right to escheat, while a State "by virtue of its sovereign power, may take charge of property abandoned or unclaimed for a period of time, or which has no known owner" (Germantown Trust Co. v. Powell, 108 A. 441 (PA 1919), citing Com. V. Dollar Savings Bank, 102 A. 569 (PA 1917)).

The Federal government can disregard the State's escheat laws when there exists affirmative legislation that states the Federal Government has a right to continue to hold these unclaimed funds that supersedes the State's rights. However, the Section 8 program of the U.S. Housing Act of 1937 (USHA) does not contain such affirmative language.

Additionally Federal preemption based on the Supremacy Clause in Article VI of the U.S. Constitution does not allow a PHA to disregard a State's escheat laws under Section 8 of the USHA. Section 8 of the USHA does not:

- Affirmatively regulate unclaimed property rights with PHAs (express preemption).
- Create regulation regarding unclaimed property rights that is so extensive that the State cannot supplement or replace it (implied preemption).
- Regulate unclaimed property rights such that a PHA cannot comply with both Federal and State regulations (conflict preemption).

HUD's position is that if a Housing Choice Voucher tenant is eligible for a reimbursement check and one is issued to the tenant, the PHA has complied with 24 CFR 982.517. The PHA has also complied with Section 11 of the Consolidated Annual Contributions Contract for the Rental Certificate and Rental Voucher Program (CACC) which says that Section 8 funds must be expended for "housing assistance payments." Once the check is made payable to the tenant and obligated to that tenant, the ownership of funds passes to the tenant. CACC and 982.157(b)(1)(i) are not concerned with the ultimate fate of the funds or their custodial responsibility.

Portability Billing

HUD published Notice PIH 2011-3, HCV Family Moves with Continued Assistance, on January 19, 2011. This Notice established the timeframes for the different stages of portability billing arrangements and provides new guidance to PHAs on resolving portability billing issues. Below is a summary of portability billing. Please refer to Notice PIH 2011-03 for a detailed explanation.

Initial Billing (Par 8 and 9). If the receiving PHA will be billing the initial PHA, the receiving PHA must complete and mail the Form HUD-52665 and Form HUD-50058 within 10 working days after the Housing Assistance Payment (HAP) contract is executed (but no later than 60 days after the family's original voucher expires). If the initial PHA does not receive billing paperwork within 10 days of the HAP contract execution, the initial PHA is not obliged to honor the initial billing. The initial PHA must immediately inform the receiving PHA in writing that it is not accepting the late billing submission. The receiving PHA is then required to absorb the family into its own program unless the initial PHA agrees to accept the late submission.

If paperwork is appropriately received, the initial PHA must make the first payment in the amount due within 30 calendar days of receipt of Part II of the Form HUD-52665. The PHAs must communicate to ensure that the payment is made in a form and manner that the receiving PHA is able and willing to accept.

Annual Billing (Par 10). As part of its annual billing activities, the receiving PHA must send the initial PHA an updated Form HUD-50058 no later than 10 working days following the effective date of the annual reexamination. This is required every year while the receiving PHA is billing the initial PHA on behalf of the family whether or not there is a change in the billing amount.

If the initial PHA does not receive the Form HUD-50058 within 30 days after the annual recertification date, these are the steps it should take, while continuing, throughout this process, to make payments to the receiving PHA:

1. Notify the initial PHA in writing. Copy the director (or the designee) of the OPH in the HUD area with jurisdiction over the receiving PHA.
2. The receiving PHA has 30 days to correct the error upon receipt of the letter.
3. If the matter is still not resolved, the initial PHA may request by memo to the same OPH director that the receiving PHA be required to absorb the vouchers in question.
4. OPH will notify the receiving PHA as well as the OPH Director in the HUD Area Office with jurisdiction over the receiving PHA within 15 working days of receiving the PHA memorandum requesting absorption.
5. If the receiving PHA contests that Form 50058 was sent in late, it has 15 working days to respond and provide any supporting documentation.
6. The OPH will make a decision no later than 15 working days following the deadline by which the receiving PHA had to respond to the OPH memorandum.
7. The OPH will make its announcement by letter. If the OPH determines that the vouchers are to be absorbed by the receiving PHA, the billing arrangement related to these vouchers will end on the first of the following month after the date of the OPH letter.

Notification of Change in Billing Amount (Par 10). The receiving PHA is also required to send a new Form HUD-52665 along with the Form HUD-50058 to report any change in billing amount. If the receiving PHA fails to send the PHA Form HUD-52665 within 10 working days following the effective date of the changed billing amount, the initial PHA is not responsible for paying any increase incurred prior to the notification. If the receiving PHA is late in submitting Form HUD-52665 and the change was a decrease in monthly billing, the initial PHA will reduce what it pays to the receiving PHA in future payments until the difference is made up.

Payment of Subsequent Billing Amounts (Par 12). If the receiving PHA does not receive payment by the 5th working day of the month, the receiving PHA should take the following steps:

1. Notify the initial PHA in writing. Copy the director (or the designee) of the OPH in the HUD area with jurisdiction over the receiving PHA.
2. If the initial PHA does not correct the error by the second month following the notification, the receiving PHA may request by memorandum to the OPH director over the receiving PHA that HUD transfer the unit or units and the associated funding.
3. Within 15 days of receipt of the request, the OPH notifies the initial PHA (and the OPH director in the HUD Area Office with jurisdiction over the initial PHA). The initial PHA will have 15 days to respond and provide any supporting documentation to refute the claim of lateness, if desired.
4. The OPH must make a decision within 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 were late, the OPH will send a memorandum to the Hous-

ing Voucher Financial Management Division stating the number of units to be permanently transferred from the initial PHA to the receiving PHA. This transfer will take place within 30 days of receipt of the transfer memorandum, changing the baseline number of units and concomitant budget authority in the annual contributions contract of each PHA.

To read the notice: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8985.pdf

HUD-VASH Portability

Special consideration must be taken into account when applying portability to HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers. Portability policies vary depending on whether the family moves within or outside the catchment area of the referring Veterans Affairs Medical Center (VAMC) as described in the table below. The catchment area is the geographical area surrounding a VAMC that is serviced by that same VAMC.

Prior to any portability move, the Department of Veterans Affairs (VA) must confirm in writing that case management services will continue to be provided to the HUD-VASH family. In general, HUD-VASH families may only reside in areas that are accessible to case management services as determined by the partnering VAMC.

Within catchment area	Outside of catchment area
<ul style="list-style-type: none"> A HUD-VASH family can move under portability within the referring VAMC's catchment area if the same VAMC continues to provide case management. 	<ul style="list-style-type: none"> A HUD-VASH family can move to a new catchment area if the referring VAMC confirms that the new VAMC has an available case management slot.
<ul style="list-style-type: none"> If the receiving PHA does not administer HUD-VASH vouchers, the receiving non-VASH PHA must bill the initial VASH PHA. 	<ul style="list-style-type: none"> The receiving PHA must administer HUD-VASH vouchers. The family cannot move under portability if there is not a VASH PHA in the area to which the family wishes to move.
<ul style="list-style-type: none"> If the receiving PHA administers HUD-VASH vouchers, the receiving PHA <u>may either absorb the family or bill the initial PHA</u>. In either case, the VA must be consulted prior to the move and agree that case management services will be provided. 	<ul style="list-style-type: none"> If the new VAMC has an available case management slot, and the receiving PHA has an available HUD-VASH voucher, the family can move to the new catchment area. The receiving PHA <u>must use one of its HUD-VASH vouchers to absorb the family</u>.

PHAs awarded HUD-VASH vouchers, as well as receiving PHAs administering HUD-VASH vouchers under portability, must comply with special reporting requirements. For information on these requirements and other HUD-VASH information, visit the HUD-VASH Web site at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/vash.

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