



LEGAL SERVICES OF GREATER MIAMI, INC.

Chesterfield Smith Center for Equal Justice
3000 Biscayne Boulevard, Suite 500 • Miami, FL 33137-4129
Direct Line: (305) 438-2403 • Fax: (305) 573-5800 • TDD: (305) 573-1578
Jhearne@lsgmi.org • www.lsgmi.org

LANCE A. HARKE
President

CARLOS J. CANINO
1st Vice President

YANICK J. LANDESS
2nd Vice President

JEFFREY B. CROCKETT
Treasurer

NANCY CIAMPA
Secretary

GARRETT J. BIONDO
Immediate Past President

MARCIA K. CYPEN
Executive Director

November 9, 2011

Mr. Jose Cintron
Director of Office of Public Housing
U.S. Department of Housing and Urban Development
Miami Field Office
Brickell Plaza Federal Building
909 SE 1st Ave., Room 500
Miami, FL 33131-3042

Re: Miami Dade County's Request for Regulatory Waiver

Dear Mr. Cintron:

We are requesting that HUD reject MDPHA's request to waive the requirements under 24 C.F.R. §982.505 which requires a PHA to wait to implement a lower payment until the second recertification. MDPHA has advised us that HUD allowed MDPHA to immediately implement the new payment standard, but MDPHA has not yet received written approval from HUD. Our offices represent many Section 8 voucher participants who are facing dramatic changes in their portion of the rent and these participants were given little advance warning. These participants are entitled to the protections in the regulation and HUD should not waive this requirement.

MDPHA chose to reduce its payment standard from approximately 97.6 % of Fair Market Rent (FMR) to 90% of FMR effective October 1st. At the same time, HUD decreased Miami-Dade County's FMRs effective October 1, 2011, amplifying the effect of MDPHA's decision to lower its payment standard. For example, the payment standard for a 3 bedroom voucher decreased from \$1,479 to \$1,296 on October 1, 2011.

On September 9, 2011, MDPHA requested its waiver from HUD. On September 12, 2011, MDPHA wrote a letter to all Section 8 Voucher Participants stating that changes in the payment standard will go into effect at the next recertification. On September 15, 2011, MDPHA had a meeting with Section 8 landlords where more than 300 landlords attended. Strikingly, MDPHA did not have a meeting to advise Section 8 participants about this significant change, even though the participants are being asked to bear the burden of this change. As early



PASSIONATELY COMMITTED TO EQUAL JUSTICE

as September 15, 2011, MDPHA began immediately implementing the new payment standard on participants who were recertifying – only 6 days after requesting the waiver from HUD. To date, HUD has not issued a written approval of the regulatory waiver.

The HUD regulation 24 C.F.R. §982.505 serves as an important protection for Section 8 participants who remain in the same unit. It ensures that Section 8 participants will not be surprised by a dramatic increase in their rent obligation. Legal Services is currently representing a Section 8 participant with no income. She has lived in the same location for several years and Section 8 paid the entire rent to the landlord. She completed her recertification on September 15, 2011, and without any explanation to her, her rent obligation increased to \$154 effective November 1st. She was not given advance notice of this change, nor was she given the choice to move elsewhere. This tenant cannot afford her portion of the rent and could face eviction because of this unexpected rental change. Her story is not unique and it is the type of “surprise” situation which 24 C.F.R. §982.505 attempts to avoid.

Section 8 participants are also entitled to due process when the payment standard is reduced. The 9th Circuit Court of Appeals recently held that a Section 8 voucher participant has a property interest which is “protected against an abrupt and unexpected change in benefits.” *Nozzi v. Housing Authority of the City of Los Angeles*, 425 Fed. Appx. 539 (9th Cir. 2011). Compliance with 24 C.F.R. §982.505 ensures that Section 8 participants are not deprived of their property interest without due process and to avoid abrupt and unexpected changes in their assistance.

While PIH Notice 2011-28 allows for a PHA to request a regulatory waiver for good cause, it “strongly recommends that the PHA first consider taking other actions having no impact or less impact on families.” MDPHA’s request for a waiver states that the reason for the waiver is the “*anticipated* shortfall in Housing Assistance Payment (HAP) funding which has been a continued problem for MDPHA since its unprecedented \$43 million recapture of Net Restricted Assets from the Housing Choice Voucher Program.” The PIH Notice states that the wavier should “at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the PHA has already taken or will take in the future.” MDPHA’s request contains no specifics about the amount of the anticipated shortfall, how it calculated the shortfall, or a description of other steps taken by the PHA to reduce the impact on families.

PIH Notice 2011-28 makes absolutely clear that “any cost-savings measures referenced in this notice that constitute a significant amendment or modification...are subject to..a public hearing and comment period.” MDPHA’s most recent Annual Plan defines a “substantial deviation” from the current plan as, “insufficient budget authority from HUD, including variation from previous year’s funding, necessitating the need to alter, reduce, or terminate any specific program activity or projects.” MDPHA’s decision to adjust the payment standard immediately due to an anticipated budget shortfall clearly falls within the definition of a substantial deviation from its plan and triggers the public hearing and comment requirements. To our knowledge, MDPHA did not comply with the notice and public comment requirements under the regulation, did not consult with the Resident Advisory Board, and did not request HUD’s approval of the substantial deviation from its current plan.

November 9, 2011

Page -3-

We understand that MDPHA must make difficult decisions based on its current financial status. With the reduction in the payment standard, families are already having a difficult time locating housing. In the past week, two large families with 5 bedroom vouchers have contacted LSGMI because they cannot find a landlord who will rent to them at the lower payment standard. Because of the difficulty locating housing, these families are currently homeless. The lowered payment standard has made the voucher virtually unuseable for these families. Section 8 voucher holders will now have fewer choices regarding where to live and will be forced to use their voucher in neighborhoods with less opportunities, less quality housing stock, and higher poverty concentrations. This clearly has fair housing implications as it does not affirmatively further fair housing.

HUD must protect those families who want to remain in their current unit and reject MDPHA's request for a regulatory waiver. MDPHA should be required to follow the current regulations and wait until the second annual recertification before implementing the new payment standard. This would allow Section 8 participants a year to prepare for an increased rent burden or make financial preparations to relocate to cheaper housing. HUD should immediately inform MDPHA to stop processing changes at the time of recertification pending HUD's consideration of this waiver and HUD should reject MDPHA's request for a waiver from 24 C.F.R. §982.505.

If you have any questions about our request or need any additional information, please contact me at (305) 438-2403.

Sincerely,

Jeffrey M. Hearne
Advocacy Director
Legal Services of Greater Miami, Inc.

Charles Elsesser
Attorney
Florida Legal Services

Sean Rowley
Senior Staff Attorney
Legal Services of Greater Miami, Inc.

cc: Sandra Henriquez, U.S. HUD
Gregg Fortner, Director
Terrence Smith, Esq., Miami-Dade County Attorney
Beatriz Cuenca-Barberio, Program Director, Section 8 Voucher Program
Commissioner Rebecca Sosa, Chair, Economic Development & Social Services Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

FEB 24 2012

Mr. Gregg Fortner
Executive Director
Miami-Dade County Public Housing
and Community Development
701 NW 1st Court, 16th Floor
Miami, FL 33136-3914

Dear Mr. Fortner:

On September 9, 2011, you requested a waiver of 24 CFR § 982.505(c)(3) so that the Miami-Dade Public Housing and Community Development (MDPHCD) could apply the lower payment standard amount at each family's first annual reexamination following the reduction in the payment standards for all reexaminations effective on or after November 1, 2011. The cited regulation provides that, if the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

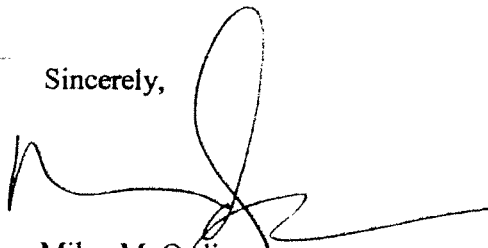
For clarification, it should be noted that a public housing agency (PHA) can reduce its payment standards at any time in accordance with its administrative plan policies. However, applying those reduced payment standards before the family's second annual reexamination after the reduction requires a waiver of the aforementioned regulation, and such waivers are only applicable for the calendar year in which a PHA will experience a shortfall. It is our understanding that MDPHCD did not want to pursue a waiver that immediately applied the decrease in payment standards to all families in 2011. Therefore, in order for the waiver to be approved as requested (and not apply only to the months of November and December 2011) HUD had to determine that MDPHCD would have a shortfall in 2012.

Staff in the Miami Office of Public Housing has been working in conjunction with the Shortfall Prevention Team (SPT) in reviewing the various factors to determine whether sufficient grounds exist, consistent with current regulations and policy, to recommend that the Assistant Secretary approve your agency's request. During that time period, the SPT has shared and exchanged information with Craig Clay, MDPHCD Deputy Executive Director/Chief Financial Officer, regarding this request in order to come to agreement on the variables that would be used for the financial analysis. According to the analysis performed by the SPT there is not good cause to support this waiver request for calendar year 2012 (see attached analysis). According to the SPT's projections, MDPHCD could potentially realize a year-end surplus of approximately \$8,842,092. Therefore, a waiver of 24 CFR § 982.505(c)(3) will not be approved.

It is our understanding that MDPHCD started applying its lower payment standards to its families recertified for the month of November 2011 and has continued to do so without the requisite waiver. Consequently, any families that have been overpaying their tenant share of the gross rent due to the lowering of the payment standards in violation of 24 CFR § 982.505(c)(3) must be reimbursed for each month they overpaid. You should work with the field office to ensure that this task is accomplished in a timely manner.

Should you wish to discuss this matter further, please contact Phyllis Smelkinson, Housing Program Specialist, Housing Voucher Management and Operations Division, at (202) 402-4138.

Sincerely,

A handwritten signature in black ink, appearing to read 'Milan M. Ozdinec'. The signature is stylized with a large loop at the top and a long horizontal stroke extending to the right.

Milan M. Ozdinec
Deputy Assistant Secretary for Public
Housing and Voucher Programs

Attachments

HCV Leasing and Spending Projection

PIA Name	SEAN DADE HOUSING AUTHORITY
PIA Number	FLO05

 CY Benchmarking

 Check box to change to a CY Benchmarking method

 Displays to end leasing set aside

 Check box to eliminate Y and Leasing set aside

ACC and Funding Information

Calendar Year	2012	2013	2014
Beginning ACC #	14,677	14,677	14,677
Initial ABA	\$146,487,798	\$128,328,128	\$128,488,844
End ABA			
Funding: Year End			
Leasing			
Funding: Other			
Categories			
New ACC Units	0	0	0
Funding			
Total ABA	\$146,487,798	\$128,328,128	\$128,488,844

Beginning CY End	00	\$8,342,082	\$11,488,441
Projected ABA	\$146,487,798	\$128,181,712	\$127,883,484
ABA per ACC unit	\$787.72	\$740.04	\$718.22

Funding Pro-Rata Levels

YR 2 & 3 Re-Benchmarking Provision	99.0%
Y-1 Set Aside	90.0%
Admin Fee Provision	75.0%

Optional ABA OFFSET	0.0%
---------------------	------

DISCLAIMER:
 Year Two and Three Re-Benchmarking funding projections are only ESTIMATES. ESTIMATING ASSUMPTIONS DESCRIBED IN THE PRODUCE.
 User agrees, by clicking 'OK', that the user understands the nature of the projections and that the user agrees to the terms and conditions of the program.

Program Projection Variables

Success Rate	80%	Annual Turnover Rate	3.0%
--------------	-----	----------------------	------

Time from issuance to HAP RT Date	% Leased in 30 days	% Leased in 60 to 90 days	% Leased in 90 to 120 days	% Leased in 120 to 150 days
30 days	45%	10%	0%	0%
60 to 90 days	45%	10%	0%	0%
90 to 120 days	45%	10%	0%	0%
120 to 150 days	45%	10%	0%	0%

Year: Oct - Dec 2011	Oct 2011	Nov 2011	Dec 2011
Units leased	13,287	13,283	13,287
HAP	\$14,281,787	\$14,478,157	\$14,518,838

Leasing and Spending Outcomes: Current and Following Year Projections

Current Year End Projection	Following Year End Projection
YR 1 % of ABA (1.0%)	89.4%
YR 2 % of ABA (1.0%)	93.7%
YR 3 % of ABA (1.0%)	91.8%
HAP Exp as % of ABA only	93.7%
	98.0%

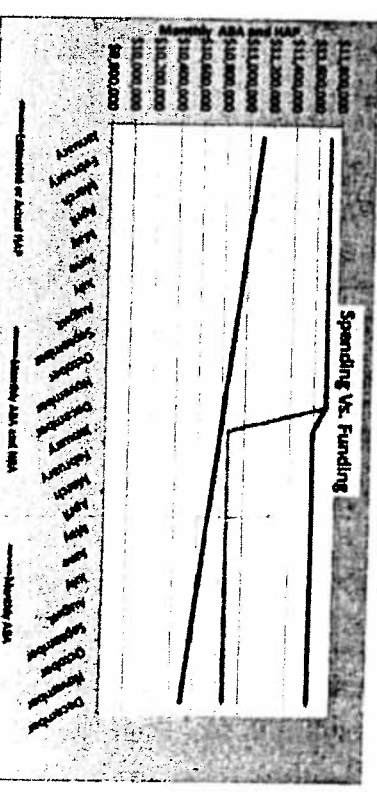
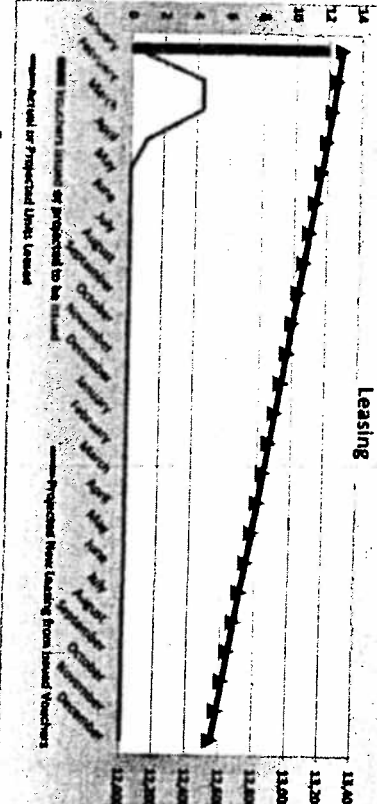
Projected Yr End ABA	\$8,342,082	\$11,488,441
HAP as % of ABA	6.3%	8.8%

Beginning Year Three	128,500	surplus	2 months HSA will cover 11.3 months units
----------------------	---------	---------	---

Col A - Start 600 units	Col B	Projected ABA from	\$14,423,388	\$14,322,283
\$54.48	\$8.12			

HCV Leasing and Spending Projection

2012	ACC Units (Total) (enter only if change)	ACTUAL Leased Units	Actual HAP	Vouchers issued or projected to be issued	Other Planned additions or reductions to issued units	New Leasing from Issued Vouchers	Estimated Addition	Leased units: actual and projected	HAP Expense: Actual and Projected	PUC Actual or Projected	Annual PUC Over/Under	Commitment Annual Leased %	Commitment ABA Expended %	Sparsity Util. %	Sparsity ABA Expended %
January	14,677	11,247	\$11,116,036	12		0	-33	11,247	\$11,116,036	\$837		90.5%	94.9%	90.5%	94.9%
February	14,677	0	0	0		4	-33	11,258	\$11,081,863	\$837		90.4%	94.8%	90.3%	94.7%
March	14,677	0	0	0		4	-33	11,269	\$11,047,748	\$837		90.3%	94.7%	90.1%	94.5%
April	14,677	0	0	0		1	-33	11,287	\$11,014,861	\$837		90.2%	94.6%	99.8%	94.3%
May	14,677	0	0	0		0	-33	11,344	\$11,011,279	\$837		90.1%	94.5%	99.7%	94.1%
June	14,677	0	0	0		0	-33	11,351	\$10,987,146	\$837		90.0%	94.4%	99.5%	93.8%
July	14,677	0	0	0		0	-33	11,398	\$10,958,282	\$837		89.9%	94.3%	99.2%	93.6%
August	14,677	0	0	0		0	-33	11,406	\$10,930,886	\$837		89.8%	94.2%	99.0%	93.4%
September	14,677	0	0	0		0	-33	11,433	\$10,903,500	\$837		89.7%	94.1%	98.8%	93.1%
October	14,677	0	0	0		0	-33	11,460	\$10,877,300	\$837		89.6%	93.9%	98.6%	92.9%
November	14,677	0	0	0		0	-33	11,488	\$10,850,186	\$837		89.5%	93.8%	98.4%	92.7%
December	14,677	0	0	0		0	-32	11,896	\$10,821,668	\$837		89.4%	93.7%	98.1%	92.4%
Total	\$16,134	11,247	\$11,116,036	12	0	14	-34	117,248	\$131,658,877	\$837		89.4%	93.7%	98.1%	92.4%
January	14,677					0	-32	11,893	\$18,764,931	\$837		87.9%	99.4%	87.9%	99.4%
February	14,677					0	-32	12,871	\$18,767,944	\$837		87.8%	99.3%	87.7%	99.1%
March	14,677					0	-32	12,836	\$18,741,824	\$837		87.7%	99.1%	87.5%	98.9%
April	14,677					0	-32	12,807	\$18,714,172	\$837		87.6%	99.0%	87.3%	98.6%
May	14,677					0	-32	12,775	\$18,687,286	\$837		87.5%	98.9%	87.0%	98.4%
June	14,677					0	-32	12,743	\$18,660,688	\$837		87.4%	98.8%	86.8%	98.2%
July	14,677					0	-32	12,711	\$18,634,916	\$837		87.3%	98.6%	86.6%	97.9%
August	14,677					0	-32	12,679	\$18,609,431	\$837		87.1%	98.5%	86.4%	97.7%
September	14,677					0	-32	12,647	\$18,584,812	\$837		87.0%	98.4%	86.2%	97.4%
October	14,677					0	-32	12,616	\$18,560,446	\$837		86.9%	98.3%	86.0%	97.2%
November	14,677					0	-32	12,584	\$18,536,874	\$837		86.8%	98.2%	85.7%	96.9%
December	14,677					0	-31	12,553	\$18,513,794	\$837		86.7%	98.0%	85.5%	96.7%
Total	\$16,134	0	\$0	0	0	0	-31	112,727	\$127,772,771	\$837		86.7%	98.0%	86.7%	96.7%



Comments: Additional Leasing should prioritize utilization of the currently unleased 40 VASH vouchers. Current Calculated ABA of \$178,000 compares to Current HAP ABA of \$-17,668. VASH ABA as % of HAP estimated ABA is 43.54% (2012). HAP ABA as % of HAP is 34.62% (2012). Cash ABA of 80 compares to 2012 plan ABA of 4-17,668.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING
Quality Assurance Division

February 28, 2012

Gregg Fortner, Executive Director
Miami Dade County Public Housing
and Community Development
701 NW 1ST Court, 16th Floor
Miami, FL 33136

Dear Mr. Fortner:

We received your agency's January 31, 2012, response to our RIM review report of January 4, 2012. We also received a copy of the February 24, 2012, letter denying approval of your request for waiver of 24 CFR §982.505(c) (3) so your agency could apply a decreased payment standard at the first annual reexamination.

Based on the supporting documentation you provided, we are able to close all tenant file errors with the exception of Brown, S- 9322. MDPHCD applied the decreased payment standard for this family at the first annual reexamination. To clear this error, please provide evidence the housing assistance payment was recalculated applying the appropriate payment standard and the family was reimbursed accordingly.

Our review further determined MDPHCD applied the decreased payment standard for all annual reexaminations effective November 1, 2011, rather than applying the decreased payment standard at the second regular annual reexamination. Without waiver approval, this finding remains a systemic deficiency and requires a review of all tenant files with a reexamination date of November 1, 2011, and later to determine which families have overpaid tenant share of gross rent. All impacted families must be reimbursed.

Please advise how the Housing Authority plans to correct the finding and the expected completion date. This should be sent to Tanya.l.ludwig@hud.gov within 30 days. To clear the finding, we must receive a spreadsheet with the names and last four digits of social security numbers of all families affected along with the calculation for the corrected HAP for each participant to include the reimbursement amount to the family.

Throughout this process, our office will provide the Miami Field Office with ongoing status reports until we are able to close the finding and review.

If you have any questions or wish to discuss the review report and the issues addressed in this letter, please contact Tanya Ludwig at 305-520-5075.

Sincerely,

Robin L. Barton
Supervisory Program Analyst
Quality Assurance Division

cc: Jose Cintron, Director, Office of Public Housing



U.S. Department of Housing and Urban Development

Region IV, Miami Field Office
Brickell Plaza Federal Building
909 SE First Avenue, Rm. 500
Miami, FL 33131-3042

March 2, 2012

Jeffrey M. Hearne
Advocacy Director
Legal Services of Greater Miami, Inc.
3000 Biscayne Boulevard, Suite 500
Miami, FL, 33137-4129

Sean Rowley
Senior Staff Attorney
Legal Services of Greater Miami, Inc.

Re: MD PHCD Prematurely Implementing New Payment Standards

Dear Sirs:

This is in response to your letter dated February 14, 2012, regarding the Legal Services of Greater Miami, Inc.'s (LSGMI's) request that HUD immediately take steps to ensure that the Miami Dade Public Housing and Community Development (MDPHCD) complies with federal regulations governing Section 8 Housing Choice Voucher (HCV) Program to stop processing lower Payment Standard (PS) changes in violation of 24 CFR 982.505 (c) (3).

Enclosed is the Department's formal reply dated February 24, 2012, disapproving the MDPHCD's PS waiver request. In addition, the Department requested the MDPHCD reimburse any HCV clients overpaying their tenant share of the gross rent due to the lowering of the PSs. In a response, Gregg Fortner, Executive Director, MDPHCD, states that they "will immediately begin the required adjustments."

Should you have any additional questions, please contact me at (305) 520-5078.

Sincerely,

A handwritten signature in black ink that reads "José Cintrón".

José Cintrón
Director
Office of Public Housing

Enclosure

cc: Terrance Smith, Esquire
Charles Elsesser, Esquire

HUD's mission is to create strong, sustainable, inclusive communities and quality, affordable homes for all.

www.hud.gov

espanol.hud.gov