

U.S. Department of Housing and Urban Development
PUBLIC AND INDIAN HOUSING

Special Attention of:
Secretaries Representatives;
All Public Housing Agencies and
Indian Housing Authorities;
Public Housing, Office Directors;
Administrators, Offices
of Native American Programs
Resident Management Corporations

Transmittal Handbook No.: 7401.7G

Issued: January 31, 1997

1. This Transmits: Guidebook 7401.7, Housing Agency (HA) Guidebook: Employee Benefit Plans. This Guidebook supersedes Handbook 7401.7, PHA Personnel Policies Handbook, Part II, Employee Benefit Plans, dated 9/88.
2. Introduction. PHA Personnel Policies Handbook 7401.7 was composed of two parts: Part I entitled Personnel Practices and Part II entitled Employee Benefit Plans. Part I was concerned with the provision, implementation and administration of general personnel practices such as comparability, salary setting, leave and travel for public housing agencies. Part II was concerned with the specific personnel practice involving the provision, implementation and administration of employee benefit plans for public housing agencies.
3. Recision of Handbook Material. Subsequently, in keeping with the Department's movement toward deregulating and decontrolling HAs, Notice PIH 95-35 (HA) was issued to inform all housing authorities (HAs) that Handbook 7401.7, Part II, Employee Benefit Plans was abolished. Notice PIH 96-44 (HA) extended Notice PIH 95-35 (HA) until December 31, 1996. Part H was to be retained as guidance until it could be updated and rewritten as a guidebook. Guidebook 7401.7 fulfills that instruction.

Additionally, Handbook 7401.7, Part I, Personnel Practices, was abolished. This is because the personnel requirements contained in Section 307(a) of the superseded Annual Contributions Contract (ACC) were not extended to in the recently revised ACC. Therefore, no provision will be made for reissuance of the earlier Part I general personnel practices as a guidebook.
4. Applicability: Guidebook 7401.7 is applicable to HAs that administer the Public Housing Program, including the Section 10(c) and Section 23 Leased Housing Programs, and the Turnkey III Homeownership Opportunities Program. It also applies to Indian Housing Programs, including the Rental, Mutual Help Homeownership Opportunity and the Turnkey III Homeownership Opportunities Programs. Handbook 7401.7, Part II, was not applicable previously to the Sec. 8 Housing Assistance Payments Programs, except for HA-owned Sec. 8 projects.
5. Purpose. The elimination of HUD requirements is in keeping with the Department's movement toward deregulating and decontrolling HAs. The removal of most employee benefit plan requirements will maximize flexibility in the hands of HAs. As decision makers, HAs will be responsible for ensuring that their employee benefit programs are both viable and affordable.
6. Remaining Applicable Policies. Laws and Regulations. Although HUD-established requirements applicable to HA employee benefit plans have been abolished, it should be noted that some of the provisions which were included in Part II have their basis

in other basic HUD policy and/or are contractual provisions contained in the Annual Contributions Contract (ACC), Form HUD-53012A dated 7/95. Therefore, these provisions nonetheless remain in effect. In addition, some requirements mandated by other Federal agencies have been retained because they are either statutory or regulatory. The primary Federal legislation governing HA employee benefit plans is discussed briefly in paragraphs 1-5 and 1-6 of the Guidebook. The continuation of basic HUD policies, as well as other Federal laws and regulations still applicable to HAs, are briefly discussed below. In addition, it should be noted that HA employee benefit plans may be subject to State-mandated laws and regulations.

7. Identification of Requirements Retained. The following references are to the paragraphs in this Guidebook.

a. CHAPTER 1. GENERAL PROVISIONS.

1-3. Applicability. See paragraph 4 of this Notice. Note that HAs are still required to comply with all Federal, State and local laws applicable to employee benefit plans and other conditions of employment.

1-8. Conflict of Interest. The conflict of interest provision is continued and is contained in Section 19 of the ACC (Form HUD-53012A dated 7/95).

1-11. Availability and Proration of Funds. Although approval of employee benefit plans is no longer required, their costs will still be subject to budgetary approval. Proration of expenses should continue to follow the basis used to distribute other payroll related expenses.

CAVEAT: HUD does not now, or for the foreseeable future, contemplate providing any adjustment under the Performance Funding System (PFS) for increased costs incurred in providing employee benefits, except to the extent provided pursuant to 24 CFR Sec. 990.108(c). Under Sec. 990.108(c) of the PFS Regulations, (or, for Indian housing authorities, 24 CFR Sec. 950.720.(c)) provision is made for an increase in operating subsidy in cases where a change in Federal (but not State) law or regulation results in a significant increase in expenditures of a continuing nature. Therefore, any HA that elects to increase employee benefit plan expenditures will do so at its own risk and expense.

1-12. Procurement. The procurement, amendment or revision of an employee benefit plan remains subject to the procurement requirements published in the Code of Federal Regulations at 24 CFR Sec. 85.36 (24 CFR Sec. 950.160, for Indian housing authorities). The small procurement threshold was revised to \$100,000 in keeping with the current Sec. 85.36.

b. CHAPTER 2. PRIVATE RETIREMENT PLANS

2-1. Internal Revenue Service (IRS) Qualification. HUD no longer requires that HAs submit retirement plans to the IRS for qualification. Nonetheless, it is highly recommended that HA private retirement plans be filed with the IRS for qualification. While qualification under the Internal Revenue Code (IRC) does not offer any tax advantages to the HA, such qualification provides the HAs' employees with significant protections. For example, failure to qualify the plan could result in all employer contributions and resulting

interest becoming immediately taxable as constructively received income. Qualification of the plan should be discussed with the insurance company's agency or the plan's sponsor.

2-2a. IRC Sec. 401(k) Deferred Compensation Plans. Sec. 1116 (f) of the Tax Reform Act of 1986 still prohibits governmental agencies, such as HAS, from adopting an IRC Sec. 401(a) plan.

2-8. Contributions. It should be noted that the IRC places certain restrictions on the amounts that an employer may contribute to a qualified retirement plan. Similarly, the IRS usually will not approve mandatory employee contributions above an amount which is not considered to be burdensome (usually 6 percent of gross salary). Further, the IRC limits the amounts which an employee may voluntarily contribute. Limitations on contributions to qualified plans should be discussed with the insurance company's agent or the plan's sponsor.

2-9. Nondiscrimination Requirements for Employer Matching Contributions and Employee Contributions. Qualified plans are subject to TRA'86 Sec. 1114, Definition of Highly Compensated Employee, and Sec. 1117, Nondiscrimination Requirements for Employer Matching Contributions and Employee Contributions. Note the penalty for failure to meet the Annual Contribution Percentage Test which is discussed in paragraph 2-11.

2-13. Prior Service Credit. HAS may not duplicate any benefits or prior service credit provided under a prior (or the existing) plan.

2-18. Vesting. Pursuant to the IRC, under no condition shall any amendment change the vesting schedule to one which would result in the nonforfeitable percentage of the accrued benefit derived from employer contributions, determined as of the later of the date of the adoption of the amendment or of the effective date of the amendment, of any participant being less than such nonforfeiture percentage computed under the plan without regard to such amendment. See also, paragraph 2-28, Amendment.

c. CHAPTER 3. LIFE INSURANCE

3-2. Allowable Forms of Life Insurance. The IRC restricts the amount of employer contribution that may be applied toward the purchase of certain types of life insurance benefits which are provided within a qualified retirement plan.

d. CHAPTER 4. HEALTH INSURANCE

4-1. Health Maintenance Organizations. As political subdivisions, HAS remain subject to Sec. 1310 of the Health Maintenance Organization (HMO) Act of 1973. However, recent amendments have modified the impact of the 1973 HMO Act.

3

4-2. Consolidated Omnibus Budget Reconciliation Act of 1985. COBRA remains applicable to HAS. Note that the policy discussed in subparagraph 4-2f, with respect to the Performance Funding System remains in effect.

e. CHAPTER 6. SOCIAL SECURITY. All of Chapter 6 remains applicable to HAS.

8. Assistance. HUD staff is no longer able to provide technical assistance to HAS on employee benefit plans matters. HAS should direct any questions to the plan's agent or sponsor. Alternately, questions should be forwarded to the appropriate agency responsible for the subject matter.

9. Effective Date: The elimination of HUD requirements applicable to HA employee benefit plans was effective June 8, 1995. The effective date of Guide Handbook 7401.7 is January 1997.

10. Filing Instructions:

Remove:

Handbook 7401.7, Part II,
dated 9/88

Insert:

Guidebook 7401.7, dated 1/97

Kevin Emanuel Marchman
Acting Assistant Secretary for
Public and Indian Housing

Guidebook 7401.7
U.S. Department of Housing and Urban
Development

Office of Public and Indian Housing

Departmental Staff

Public Housing Agencies

Housing Agency (HA)
Guidebook:
Employee Benefit Plans

January 1997

U.S. Department of Housing and Urban Development
PUBLIC AND INDIAN HOUSING

Special Attention of: Regional Administrators; Transmittal
Handbook No.: 7401.7

Directors, Offices of Regional Public
Housing; Field Office Managers; Issued: September 28, 1988
Housing Management Directors; Chiefs,
Assisted Housing Management Branch;
Directors, Offices of Indian Programs;
Public Housing Agencies; Indian Housing
Authorities

1. This Transmits

Handbook 7401.7, Public Housing Agency (PHA) Personnel Policies
Handbook, Part II -- Employee Benefit Plans, dated 9/88.

2. Explanation of Material Transmitted:

Handbook 7401.7, PHA Personnel Policies Handbook, Part II --

Employee Benefit Plans supersedes Handbook 7401.5, Employee Benefit Plans, dated 7/74. Handbook 7401.7 is composed of two parts. Part I, Personnel Practices, provides requirements and guidance for PHA/IHA administration of general personnel practices, including personnel policies and procedures and political activity. Part II, Employee Benefit Plans, is concerned with the specific personnel practice involving the provision of employee benefit plans for PHA/IHA employees and their dependents and beneficiaries. Thus, HUD policy regarding all public housing agency personnel operations have been consolidated into a single PHA Personnel Policies Handbook but with discrete separation of numbering and attachments to facilitate its usage.

3. Applicability:

Part II is applicable to public housing agencies (PHAs), including Indian Housing Authorities (IHAs), which administer the Public Housing Program, including the Section 10(c) and Section 23 Leased Housing Programs, and the Turnkey III Homeownership Opportunities Program.

4. Explanation of Changes Made:

HUD policy with respect to PHA/IHA employee benefit programs has been revised completely and updated to reflect legislative changes such as the Employee Retirement Income Security Act of 1974, the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Tax Reform Act of 1986. Part II discusses various aspects of these legislative requirements which will be of interest to PHAs/IHAs. Citations are given key provisions to distinguish them from HUD requirements. The following significant changes have been made.

a. Paragraph 1-6 describes the impact of recent legislative changes on employee benefit plans.

b. Paragraph 1-15 requires full and open competition in the procurement of all employee benefit plans in accordance with the Code of Federal Regulations, 24 CFR 85.36 (shown in Appendix 2).

c. Paragraph 2-2 identifies and describes the types of approvable private retirement plans. Paragraph 2-2a advises that HUD Approved Standard Plans are replaced by HUD Certified Plans. Prior approvals to participate in HUD Approved Standard Plans are not affected, but such plans will require amendment or replacement to conform to the recent legislative changes.

d. Paragraph 2-8 increases the allowable PHA/IHA private retirement plan contribution to 8 percent (8-1/2 percent if life insurance is included). The maximum amount that employees may be required to contribute has been increased to 5-1/2 percent (6 percent if life insurance is included). The minimum amount that employees may be required to contribute has been eliminated (to the extent that life insurance premiums are not involved). That is, mandatory

employee contributions may be set between zero percent and 5-1/2 percent (0.5 percent and 6 percent with life insurance).

- e. Paragraph 2-10 highlights possible problems which may develop where voluntary employee contributions are permitted.
- f. Paragraph 2-19 allows the PHA/IHA to pay both PHA/IHA and mandatory employee contributions to a private retirement plan if an employee becomes disabled.
- g. Chapter 3 provides more flexibility for obtaining life insurance coverage. The maximum amount of group term life insurance is increased to two times annual salary. Permanent life insurance may be used to provide supplemental death benefits within the limitations permitted under the Internal Revenue Code for the type of policy involved.
- h. Paragraph 4-1 provides that Health Maintenance Organization plans are allowable.
- i. Paragraph 4-2 increases the allowable PHA/IHA health insurance plan contribution to 75 percent of the gross family (employee plus dependent(s)) premium.
- j. Paragraph 4-4 authorizes dental expense benefits.
- k. Paragraph 4-5 explains the impact of the Consolidated Omnibus Budget Reconciliation Act of 1985 on health benefit plans of PHAs/IHAs having 20 or more employees (full and part-time).

9/88

2

-
- l. Paragraph 5-1 increases the allowable PHA/IHA contribution for disability income benefits to 1 percent. If an employee becomes disabled, the PHA/IHA may pay the full premium for disability income benefits after available leave is exhausted for up to one year until the required waiting period has been satisfied.
 - m. Paragraph 5-2 eliminates the percent of salary contribution limitation on accidental death and dismemberment coverage. Instead, the amount of benefits which may be purchased is limited to four times salary. Employees must contribute at least one-half the cost.
 - n. Appendix 6 contains an Approval Processing Flow Chart.
5. Effective Date:
The effective date of Part II of Handbook 7401.7 is 10/1/88.
6. Filing Instructions:

Remove:
Handbook 7401.5, dated 7/74

Insert:
Handbook 7401.7, Part II
dated 9/88

General Deputy Assistant Secretary
For Public and Indian Housing

9/88

3

FOREWORD

Part II of the PHA Personnel Policies Handbook establishes the policy and procedural framework for the provision of employee benefit plans to employees of public housing programs. This Handbook also provides information and advisory material concerning other Federal (non-HUD) laws and regulations with which public housing agencies must conform such as the Internal Revenue Code. Thus, it serves as an instructional and reference manual to public housing agencies and HUD Field Offices. It may assist insurance industry representatives in the development and administration of public housing agency employee benefit plans.

W-3-1, W-2 (H), R-1, R-2, R-3, R-3-1 (PIH),