



# **NOTICE OF FUNDING AVAILABILITY AND PROGRAM GUIDELINES**

**Affordable Multifamily Rental Housing  
NOFA Round 26 and NPLH 2020  
Fiscal Year 2020-2021**



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# 1 PROGRAM OVERVIEW

## 1.1 INTRODUCTION

The focus of this Notice of Funding Availability for Affordable Multifamily Rental Housing (NOFA) is on new construction and acquisition/rehabilitation projects that create new Special Needs and affordable rental housing units. This NOFA seeks to support the creation of permanent Special Needs and affordable housing projects throughout the County of Los Angeles (County). Projects funded through this NOFA are expected to help meet the housing needs of their communities, provide local economic development opportunities during construction, and assist in the alleviation of any local blighting conditions.

Through this NOFA, eligible affordable multifamily rental housing projects may apply for both capital financing and rental assistance in the form of Section 8 Project-Based Vouchers (PBVs) and Project-Based Veterans Affairs Supportive Housing (PBVASH) Vouchers. Applications for PBVs and PBVASH Vouchers must accompany a request for capital funding, except where specified, and projects must be within the jurisdiction of the Los Angeles County Development Authority (LACDA).

This NOFA makes available up to **\$105.2 million in capital funding** for eligible permanent multifamily rental housing units. Additionally, the LACDA is designating this NOFA as its public notice of a competitive request for the award of a combined total of **600 PBVs/PBVASH Vouchers**.



## 1.2 NOFA TIMELINE

NOFA 26 – FALL 2020	
Date	Event
October 8, 2020	NOFA Release
October 22, 2020	Mandatory proposers conference
October 23, 2020	<ul style="list-style-type: none"><li>▪ Submit request for Confirmation of Compliance (<u>all projects</u>)</li><li>▪ Submit request to exceed 49% NPLH units (if applicable)</li><li>▪ Submit Consolidated Plan Compliance (unincorporated projects only)</li></ul>
October 30, 2020	Response to waiver request for 49% NPLH units issued
November 3, 2020	Deadline to submit questions through the NOFA Q&A
<b>November 19, 2020</b>	<b>Applications Due Before Midnight (by 11:59 p.m.)</b>
November 25, 2020	List of applications posted
January 7, 2021	Scores issued/Appeal period begins
January 26, 2021	Project approval by LACDA Acting Executive Director
February 16, 2021	Board approval of initial projects

## 1.3 MEETING FOR FUNDED PROJECTS

NOFA Awardees may be required to attend a meeting for funded projects. This meeting, if required, will be scheduled after awards are announced, as a means of providing information to project sponsors regarding funding requirements and timelines.

## 1.4 IMPORTANT RESOURCES

### NOFA Online Application

<https://nofaonline.lacda.org/>

### Multifamily Rental Housing Information

<https://wwwa.lacda.org/for-developers/multifamily-rental-housing>

### NOFA E-mail Subscription

To be notified of upcoming NOFA rounds, meetings, and other important funding information, visit the NOFA E-mail Subscription list at:

<https://nofaonline.lacda.org/Subscription/EmailSubscription.aspx>

## 2 APPLICATION PROCESS

Applications will only be accepted via the online application system, located at <https://nofaonline.lacda.org>. All application materials, which can be found on the NOFA

application webpage, must be submitted before the application closing date and time, as indicated in this NOFA.

If a project is eligible for more than one (1) pool of funding from LACDA (if more than is offered), applicants should submit a single application for all applicable funding sources.

Acceptance by the LACDA of an application under this NOFA does not constitute a contract or commitment of any kind. The LACDA reserves the right, in its sole discretion, to reject any and all applications in whole or in part. Submission of an application under this NOFA constitutes agreement by the applicant as to all terms, conditions, requirements, and rules of the NOFA. Once an application has been submitted, applicants will not be permitted the opportunity to cure deficiencies, unless requested to do so by the LACDA. The LACDA may, in its sole discretion, request clarification of any portion of an application from the applicant and its development team.

## **2.1 MANDATORY PROPOSERS CONFERENCE**

All applicants must attend a Mandatory Proposers Conference (see NOFA Timeline above). The LACDA will not accept applications from project sponsors that did not attend the Mandatory Proposers Conference. At the end of the Proposers Conference, the LACDA will provide attendees an acknowledgement of attendance, which must be included in the application submittal.

## **2.2 QUESTIONS & ANSWERS**

Questions regarding the NOFA should only be submitted through the online portal at the “Ask a Question” link located in the top banner of the online NOFA application. Inquiries made by any other means (including by email or phone) are not considered an official question submittal and will not be answered. The deadline for submitting questions is identified in the NOFA timeline above.

## **2.3 APPLICATION EVALUATION**

Applications are evaluated in two (2) stages: 1) Threshold Review and 2) Technical Scoring and Evaluation. The Threshold Review evaluates completeness of the application and compliance with program and threshold requirements. Applications that pass Threshold Review move to Technical Scoring and Evaluation, which awards points and evaluates projects based on the NOFA Scoring Criteria.

If the Applicant is also applying for PBVs and/or PBVASH Vouchers through this NOFA, the LACDA will determine compliance with the PBV and PBVASH regulations of the U.S. Department of Housing and Urban Development (HUD) and with LACDA’s Administrative Plan requirements. See the PBV and PBVASH Vouchers Regulations and Guidelines attachment for program and application requirements.

Applications that are not complete, or that do not comply with the program and threshold requirements will not pass Threshold Review and will not receive further consideration. Applicants are notified of the outcome of both the Threshold Review and Technical Scoring and Evaluation via e-mail to the point of contact identified in the application.

## **2.4 REVIEWS AND APPEALS**

### **2.4.1 THRESHOLD REVIEW RESULTS**

Results of the Threshold Review are final and may not be appealed. The Threshold Review includes overall project feasibility, as well as specific application items, as described in the NOFA application checklist.

### **2.4.2 TECHNICAL SCORING RESULTS**

Applicants may appeal the Technical Scoring results if project scoring is below the minimum threshold for funding consideration. The written appeal will be the sole basis of the LACDA's consideration of the appeal.

Appeals may be submitted within the timeframe specified in the Notice of Technical Review Results issued by the LACDA. Late appeals will not be considered. Appeals must:

- Be in writing
- Not exceed two (2) pages in length (8 ½ x 11-inch letter size, 12-point font, 1-inch margins)
- Only address procedural or technical issues, and
- Not present new information. New information will be disregarded.

### **2.4.4 TIE BREAKERS**

In the event that there are insufficient funds to support all applications and project scoring and evaluation cannot differentiate between the final two projects, a funding recommendation will be based on the project that meets the greater number of priorities identified in the NOFA Scoring Criteria.

## **2.5 FUNDING RECOMMENDATIONS**

Applications are recommended for funding based on the Technical Scoring results and evaluation factors identified in the NOFA Scoring Criteria. An Independent Review Panel reviews project evaluation results before making funding recommendations to the LACDA's Executive Director. All awards are provisional until approved by the LACDA's Board of Commissioners.

## **2.6 CEQA CLEARANCE AND FUNDING COMMITMENTS**

Project sites must be free from severe adverse environmental conditions, such as the presence of contamination or site conditions that place an undue financial burden on the project, or that cannot be mitigated to the satisfaction of the LACDA. The LACDA's Environmental Officer must approve the site for funding eligibility based on current environmental conditions and any remediation or mitigation plan.

The LACDA shall either be named as an intended user for environmental reports or will require a reliance letter for environmental reporting that will authorize the LACDA to rely on the existing environmental report in the loan-making process. Environmental conditions must be taken into account for land valuation purposes and included in appraisals.

The applicant is required to provide formal documentation of the project's compliance and approval with California Environmental Quality Act (CEQA) no later than six (6) weeks prior to the LACDA's Executive Director making a funding recommendation to the Board of Commissioners. The final decision for funding rests with this Board. The actual issuance of a funding commitment is subject to compliance with all funding conditions; the NOFA's Administrative Provisions; preparation, signature, and delivery of the loan documents; and continued cooperation of the applicant, including delivery of any additional information or materials requested by the LACDA.

Funding under this NOFA is dependent, in part, upon appropriations from the County Board of Supervisors, and/or the U.S. Department of Housing and Urban Development (HUD). In the event funds or rental assistance offered through this NOFA are not available, the LACDA, at its sole discretion, may terminate its obligations resulting from this NOFA.

### **3 SUBSIDIES AND PROGRAM DESCRIPTION**

#### **3.1 AVAILABLE FUNDS AND RENTAL ASSISTANCE**

NOFA funds may be restricted to a target population and/or geography. Additionally, funding levels for projects in the City of Los Angeles differ from other areas in the balance of the County.

##### **3.1.1 AVAILABLE CAPITAL FUNDS**

This NOFA makes available up to a total of \$105,200,000 comprised of the following:

- Up to \$46,000,000 in Affordable Housing Trust Funds (AHTF). Units must be reserved for qualifying Special Needs populations.
- Up to \$9,200,000 in AHTF for qualifying affordable housing preservation projects.
- Up to \$50,000,000 in No Place Like Home (NPLH) funds. NPLH funds are administered by the LACDA in cooperation with DMH.

##### **3.1.2 PROJECT FUNDING AMOUNTS**

Applications requesting an amount that exceeds the maximum capital funding per unit or per project amount will be disqualified.

All funding awards are subject to further due diligence review by the LACDA prior to loan closing. The award may be reduced or increased if the LACDA determines, in its sole discretion, that the full amount of the award is not necessary to achieve financial feasibility, or if the amount is insufficient to achieve the LACDA's housing goals and objectives. The LACDA may request additional documentation from successful applicants during underwriting, including applications for funding from other public and private entities.

The LACDA may provide separate funds for eligible projects based on the target populations and/or geographic area. The LACDA reserves the right to allocate funding sources at its discretion, including incorporating federal HOME funds into eligible projects. AHTF may be combined with NPLH funds, as described in this NOFA, based on availability.

Except for Preservation projects, the use of AHTF and NPLH on the same units (stacking of funds) is permitted, at a modified project maximum award. If AHTF and NPLH funds are used to finance different units, with no stacking of funds, then the maximum funding from both sources may be requested.

<b>CAPITAL FUND PROJECT LIMITS</b>			
<b>Fund Type</b>	<b>Target Population</b>	<b>Eligible Geography</b>	<b>Maximum Subsidy Per Project</b>
AHTF	Special Needs	LA County	\$5,000,000 in areas outside of the City of Los Angeles or on County-owned land. \$2,000,000 in the City of Los Angeles. Funds are allocated on a per-unit basis for eligible assisted unit types.
AHTF	Preservation (Seniors or previously qualified as Special Needs)	LA County	\$1,000,000 (may not be combined with any other NOFA funding source). Funds are allocated on a per-unit basis for eligible assisted unit types.
NPLH	NPLH populations	LA County	\$7,000,000 for any project, with no geographic restrictions. Funds are allocated on a per-unit basis for eligible assisted unit types.
Stacking of AHTF and NPLH	NPLH populations	LA County	\$10,000,000 in areas outside of the City of Los Angeles or on County-owned land. \$7,500,000 in the City of Los Angeles. Funds are allocated on a per-unit basis for eligible assisted unit types.

<b>CAPITAL FUND UNIT LIMITS</b>	
Number of Bedrooms	Maximum Per Unit Subsidy
Studio	\$140,000
1	\$150,000
2+	\$160,000

<b>PRESERVATION FUND UNIT LIMITS</b>
\$100,000 Per Unit

### 3.1.3 AVAILABLE RENTAL ASSISTANCE

Up to a total of 600 PBVs/PBVASH Vouchers are available to projects only within LACDA's jurisdiction.

The following rental assistance is only available to projects that also receive a capital award:

- A combined total of up to 400 PBVs and PBVASH Vouchers, allocated to meet demand. These vouchers are only available to Special Needs and/or NPLH units funded by the LACDA.

The following rental assistance is available for projects without a capital award:

- Up to 100 PBVs available for eligible affordable housing preservation projects.
- Up to 100 PBVASH Vouchers.

If not fully utilized in the stated set-asides, the LACDA may reallocate PBVs/PBVASH Vouchers, as needed to meet demand. PBVASH Vouchers may be awarded to projects without a capital award based on availability, as projects requesting a combined award of capital and rental assistance will be prioritized.

<b>RENTAL ASSISTANCE TYPES</b>			
Type of Funds	Target Population	Eligible Geography	Maximum Subsidy Per Unit
PBVs	Special Needs @ 30% AMI	Unincorporated LA County or Section 8 Participating Jurisdiction	As specified by LACDA Section 8 payment standards
PBVASH Vouchers	Homeless veterans & their families @ 30% AMI		
Preservation PBVs	Special Needs & Seniors @ no greater than 50% AMI		

As project-based rental assistance becomes scarcer than in the past, the LACDA may reduce any request of PBVs and/or PBVASH Vouchers based on project need. Applicants may be notified of any such reduction during the application period, or any time before issuance of an Agreement to Enter Into Housing Assistance Payments (AHAP).

### **3.1.4 NEPA CLEARANCE FOR RENTAL ASSISTANCE**

PBVs and PBVASH Vouchers are subject to availability, approval, and qualification under HUD requirements and the LACDA's Administrative Plan. This rental assistance is available only to projects that have requested and have been awarded capital funds, with the exception of an allocation of standalone PBVASH Vouchers, as identified. Rental assistance must serve eligible populations and the project must be within the LACDA's jurisdiction, as defined in this NOFA. Contract terms will be up to 20 years, with extensions available.

Qualifying PBV and/or PBVASH projects must:

- Not replace a committed operating subsidy, except for the Flexible Housing Subsidy Pool administered by the Los Angeles County Department of Health Services (DHS).
- Use a Coordinated Entry System (CES) for lease-up. A CES must be used to fill 100% of the PBVASH units and at least 80% of the PBV units.
- Serve an eligible population.
- Request capital funds under this NOFA (standalone applications for LACDA rental assistance will not be accepted, except for PBVASH Vouchers).
- Be located in Unincorporated Los Angeles County, or within an LACDA Participating City.

PBV and PBVASH Voucher Regulations and Guidelines are available as a supplement to this NOFA. In addition, applicants must include PBV and/or PBVASH Voucher rental assistance assumptions in the NOFA application and complete all applicable tabs within the application for PBVs and/or PBVASH Vouchers.

Projects applying for PBVs and/or PBVASH Vouchers must comply with the National Environmental Policy Act (NEPA) and complete the Environmental Service Request Form included as part of this NOFA. All projects awarded HOME funds (if available) and/or PBV/PBVASH Vouchers from LACDA must receive NEPA clearance from the LACDA prior to construction loan financing. The NEPA clearance process requires approval from HUD, which takes approximately eight (8) weeks to complete.

### **3.1.5 GEOGRAPHIC PROJECT LIMITATIONS**

#### **City of Los Angeles**

Applicants with projects that seek financing through the AHTF program may generally submit a maximum of one application for a project in the City of Los Angeles in which they are the Lead Developer. A Lead Developer is a developer that possesses 51% or more of the development responsibilities and share of developer fee.

Exception to the restriction on City of Los Angeles projects:

- Applicants with projects located in a High or Highest Resource Area, as defined by the California Tax Credit Allocation Committee (CTCAC), may submit an application for an additional project in the City of Los Angeles.

Applicants submitting more than one project in the City of Los Angeles must identify which application is primary, in the event funding limitations do not allow for an award to a second project. This designation can be made in the NOFA's Application for Funding, in the "General Information" tab.

Preservation projects do not count as the one application for an applicant in the City of Los Angeles.

Projects in the City of Los Angeles that are only seeking NPLH funds are not bound by the one-project maximum. However, NPLH projects proposed in areas outside of the City of Los Angeles will be prioritized.

### Balance of the County

There is no restriction on the number of projects per applicant outside of the City of Los Angeles.

## **3.2 SPECIAL NEEDS TARGET POPULATIONS**

To qualify for funding, Special Needs units must target the following eligible populations:

- Homeless with a Mental Illness
- NPLH\*
- HIV / AIDS
- Intellectual and Developmental Disabilities
- Transition Age Youth
- Homeless Households
- Homeless Seniors
- Chronically Homeless
- Homeless Veterans
- Survivors of Domestic Violence/Human Trafficking

\*Includes adults with serious mental illness and transition age youth or children with severe emotional disorders and their families who are homeless, chronically homeless, or at risk of chronic homelessness. At risk of chronic homelessness includes persons with a mental illness who are exiting institutionalized settings, such as a hospital or jail, with a history of homelessness prior to institutionalization, and transition age youth experiencing homelessness or with significant barriers to housing stability, including one or more convictions and history of foster care or involvement with the juvenile justice system. NPLH funding carries additional requirements, as identified in the NPLH supplement to this NOFA.



### **3.2.1 AFFORDABILITY REQUIREMENTS**

Special Needs and NPLH: Units must be restricted to households earning at or below 30% of AMI. Except for NPLH units, income targeting may be as high as 35% of AMI with reasonable justification provided by the applicant and approved by the LACDA for general Special Needs units. The justification must demonstrate the ability of the Special Needs population to pay higher rents and provide examples of the Special Needs residents paying such higher rents in similar projects.

Preservation Projects: Units must be restricted to households earning at or below 50% of AMI, with turnover units restricted to no more than 30% of AMI.

The NOFA “Homeless” definitions are those used by HUD. Projects are required to adhere to the definition that is in effect at the time of project lease-up.

## **3.3 ELIGIBLE PROJECTS AND GENERAL REQUIREMENTS**

### **3.3.1 ELIGIBLE PROJECT TYPES**

The following project types are eligible for assistance through this NOFA:

- Tax Credit Projects: Projects using tax credit financing must provide at least 25 units of permanent multifamily housing and set aside the greater of 20% of the total units or 15 units for a qualifying Special Needs population.
- Non-Tax Credit Projects: Projects that do not propose the use of tax credit financing must set aside at least 20% of the total units for permanent multifamily rental housing reserved for a qualifying Special Needs population and request at least \$1,000,000 in capital funds. No unit minimum required.
- Preservation Projects: Projects must be at least 25 units in size, in operation for more than 15 years, and must demonstrate that residents are at imminent risk of economic displacement. Priority will be given to projects with an affordability covenant covering at least 50% of the units and expiring within the next ten years. Preservation projects may request capital funds, rental assistance, or both. Units must house seniors or tenants that were considered a Special Needs population upon initial lease-up and meet NOFA acquisition/rehabilitation requirements, if funding is requested. If tax credits are proposed, priority will be given to projects that will make applications to the California Tax Credit Allocation Committee (CTCAC) or the California Debt Limit Allocation Committee (CDLAC) in time to close construction financing in the 2021 calendar year. Any resident turnover of units assisted with LACDA PBVs must be reserved for an eligible Special Needs population and restricted to 30% of AMI.
- NPLH Projects: Units must be reserved for permanent multifamily supportive housing for persons who meet NPLH eligibility criteria. For projects that seek NPLH funds, the County of Los Angeles Department of Mental Health must approve the number of units set aside for NPLH-qualifying residents. Projects seeking greater than 50% of NPLH unit in a project must get written approval to do so by DMH.

Please note that motel conversions are eligible projects under this NOFA.

### 3.3.2 MINIMUM PROJECT REQUIREMENTS

All eligible project types must meet the following minimum requirements:

- Projects must be located entirely within Los Angeles County.
- Projects must demonstrate financial feasibility and positive cash flow for at least 20 years.
- The project must ensure integration of the Target Population in the community by demonstrating adequate proximity to transportation, services, and other amenities.
- Projects seeking LACDA rental assistance must be in an LACDA jurisdiction and meet all eligibility criteria.
- Proposed projects must demonstrate integration of the Target Population with the other tenant populations. Assisted Units must be integrated with other units in the project and not located in their own separate floors or areas of the building.
  - Assisted Units must be integrated with other Units in the Project and not separated onto separate floors or areas of the building;
  - Applicants must facilitate or provide regular community-building activities and architectural design features that promote tenant interaction, (for example, indoor and outdoor community space within the project, wide hallways), as feasible depending on the scope of the construction or rehabilitation activity; and
  - The service plan and property management plan must document policies that promote participation by tenants in community activities and impose no restrictions on tenants that are not otherwise required by other project funding sources or would not be common in other unsubsidized rental housing in the community.
- Projects that are currently subject to affordability covenants or agreements are only eligible if the affordability period is expiring within the next five (5) years, as measured from the date of the NOFA application. This does not apply to Preservation projects, as defined in this NOFA.
- For projects developed on land owned by or formerly owned by the LACDA or County of Los Angeles, at least 49% of the total units must be reserved for an eligible Special Needs population.
- Projects must be new construction, acquisition and operation, or acquisition with rehabilitation.
  - A rehabilitation project must:
    - Submit at the time of NOFA application a Capital Needs Assessment that meets the requirements of current CTCAC regulations.
    - Complete, at a minimum, \$40,000 in hard construction costs per unit.
    - Provide new affordable units to the housing stock. Projects with existing affordability covenants are not eligible (excluding Preservation projects), unless the covenants are expiring within five (5) years of the NOFA application due date.
    - Not displace low-income households, or remove low-income units from the housing stock, unless the project provides for a two- (2) for-one (1) unit replacement.
    - Provide with the application a Capital or Physical Needs Assessment that meets current CTCAC regulations is required.
- Projects seeking capital funds must not have commenced construction. Per HUD

guidelines, projects that are only seeking PBVASH Vouchers may be in predevelopment or be completed, but not in construction.

### **3.4 INELIGIBLE PROJECT TYPES**

Projects must be able to meet all requirements and goals of this NOFA for eligibility. The following list of ineligible project types is not to be considered all-inclusive and is provided as a guide to projects that will not be considered for assistance through this NOFA:

- Acquisition of land only.
- Projects that propose or implement local preference will not be eligible for funding. An exception to this prohibition may be made for projects in jurisdictions with their own Continuum of Care.
- SRO projects, except for conversion to full units.
- Projects that result in the removal of existing housing units or demolition of existing housing stock, except if the project provides replacement of housing units on a 2:1 basis (two units built for each unit removed). The rehabilitation of Single Room Occupancy (SRO) units into permanent units, with self-contained kitchens and bathrooms, is exempt from this replacement requirement.
- Projects with costs that exceed \$500,000 per unit, based on total development cost, without approved justification of high costs by the LACDA. The LACDA's threshold review of the justification will inform the LACDA's decision to accept or reject the application.
- Projects that propose to fund commercial tenant improvements as part of the project budget.
- Projects that include any team member that is not in compliance with LACDA requirements (includes projects in development and under LACDA asset management).
- Applications that include team members that do not meet minimum experience criteria.
- Projects that do not serve eligible tenant populations.
- Projects within 500 feet of a freeway, as measured from the first lane of travel nearest the project boundary. If a portion of a proposed development site is within 500 feet of a freeway, the project must be designed in such a way as to exclude from this 500-foot freeway "buffer" area any portion of the residential building, as well as play areas, community rooms, gardens, patios, and other areas where residents may reasonably be expected to congregate. The LACDA shall review and approve, at its sole discretion, any site plans for developments of this type.

### **3.5 ELIGIBLE APPLICANTS AND MINIMUM TEAM REQUIREMENTS**

Eligible applicants include nonprofit and for-profit organizations, limited liability companies, limited partnerships, public agencies, other local jurisdictions, community land trusts, and joint ventures among these entities.

All applicants must include the following team members and meet the following minimum criteria. If team members do not meet the minimum criteria, the project will not be eligible for funding and/or rental assistance:

- **Developer:** The applicant team must include a developer or turnkey builder with adequate financial capacity and a successful track record of developing projects

serving similar tenant populations and of similar scale as the proposed project. The developer must have completed (secured Certificate of Occupancy) at least three (3) affordable multifamily rental housing projects and meet experience requirements listed in this NOFA.

- **Lead Service Provider:**

- DHS Intensive Case Management Services (ICMS) Providers with an active Permanent Supportive Housing work order and service providers contracted with the Department of Veterans Affairs (VA) for services in VASH units automatically meet minimum Lead Service Provider criteria.
- The applicant team must include a supportive services provider with at least 12 months of experience in providing supportive services to the proposed project's Special Needs population(s) in a housing setting.
- If the Lead Service Provider does not have experience serving the proposed project's Special Needs population(s), the Lead Service Provider must justify how its prior experience serving other Special Needs populations in a housing setting is transferrable to the proposed project's population(s).
- The Lead Service Provider may be the applicant's own personnel, or a third-party contractor.
- There are no minimum Lead Service Provider criteria for the general affordable units within a special needs project.

- **Property Manager:** The applicant team must include property management staff with experience in managing at least two (2) projects with similar tenant populations, as determined by the LACDA is its sole discretion, and of similar scale as the proposed project. The property manager may be the applicant's own personnel, or a third-party contractor.

- **Architect:** The project's architect of record must be licensed in the State of California. The architect must have completed at least two (2) affordable multifamily rental housing projects, or one (1) LACDA-funded affordable multifamily rental housing project of the type currently being proposed (new construction or rehabilitation).

### 3.6 ELIGIBLE USES OF CAPITAL FUNDS

Capital funds awarded under this NOFA may be used for the following expenses:

- Reimbursement for acquisition of land and improvements in conjunction with an eligible project. Acquisition costs shall not exceed fair market value, as determined by an appraisal. Costs in excess of fair market value will be disallowed from the project budget.
- Costs in conformance with the LACDA's Underwriting Guidelines.
- If the project contains commercial space, LACDA funds may be used only to pay for eligible residential units and a proportionate amount of the project's common areas. The sources and uses of funds description shall separately detail apportioned amounts for residential space and commercial space. Tenant improvements for the commercial space shall be excluded from the project budget.
- Project predevelopment, construction, and permanent financing.

### **3.7 INELIGIBLE USES OF CAPITAL FUNDS**

Capital funds awarded under this NOFA shall not be used for the following expenses or activities:

- Substitution of any committed project financing source.
- Costs associated with units not funded by the LACDA or commercial space.
- SRO projects, unless the project is converting SROs to full units (with a kitchen/bathroom).
- Payment of invoices or expenses (during construction period) that are greater than four (4) months old at the time of submission.
- Reimbursement for project costs that have been paid by another project funding source.
- Capitalized transition reserve, or other project reserves.
- Notwithstanding qualified preservation projects, refinancing permanent debt on existing developments, or recapitalizations of any kind unless the project is within five (5) years of the termination of an affordability covenant.
- Travel expenses of any kind.
- Food or Meals.
- Application fees for other project financing.
- Office expenses.
- Costs that would normally be paid by the Limited Partnership.
- Fees associated with the LACDA NOFA, including Monitoring Fees.

### **3.8 ADDITIONAL APPLICATION ELIGIBILITY REQUIREMENTS**

In addition to meeting basic program and applicant eligibility requirements, projects must be financially feasible and maintain a positive cash flow for 20 years, as well as, demonstrate compliance with the minimum requirements for supportive service plans and architectural design.

If Federal HOME Investment Partnerships Program (HOME) funds are made part of the NOFA, compliance with the LACDA's Consolidated Plan, which sets the strategy for the expenditure of Community Development Block Grant, HOME, and Emergency Shelter Grant funding for the Los Angeles Urban County, is required. HOME funds may be made available only to projects in unincorporated Los Angeles County and Participating Cities based on availability.

#### **3.8.1 SUPPORTIVE SERVICES PLAN**

The Supportive Services Plan is not scored but will be evaluated to ensure that all requisite application forms and supporting documentation have been submitted and are complete. The Supportive Services Plan must address the needs of the proposed tenant population.

The LACDA is partnering with DHS, which administers the Housing for Health program, for the provision of supportive services to Special Needs tenants. Projects seeking to serve eligible Special Needs populations must utilize a DHS-approved ICMS provider. Supportive service organizations that would like to partner with DHS must respond to the DHS [Request for Statement of Qualifications](#) for Supportive Housing Services and subsequently enter into a Master Agreement with DHS for ICMS. Contact Christin Doyle at DHS for more

information: [CDoyle@dhs.lacounty.gov](mailto:CDoyle@dhs.lacounty.gov).

### **3.8.2 ARCHITECTURAL DESIGN REQUIREMENTS**

All projects must meet minimum building code requirements, construction standards defined by the latest CTCAC Regulations, and the LACDA's Architectural Design Requirements. Design is not scored, however, all required threshold application submittals described in the LACDA's Architectural Design Requirements document must be included in the application to pass the Threshold Review. Applications must identify whether the architect acted in the capacity of principal or junior architect. The LACDA must be notified of and approve all changes to the lead architect after initial project review and evaluation.

### **3.8.3 DEVELOPMENT FEASIBILITY**

Awardees must demonstrate that the project can successfully close construction financing within one (1) year from notice of award of funds or use NOFA funds to leverage another source of financing within six (6) months of notice of award. Construction financing close must then occur within one (1) year of this subsequent application.

Projects seeking 9% tax credits in the City of Los Angeles must provide evidence of inclusion in the City of Los Angeles Housing + Community Investment Department (HCID-LA) managed pipeline.

All applicants must demonstrate that the project may be legally developed at the proposed site. This can take the form of a zoning verification letter from the local jurisdiction, or evidence of an application for entitlements.

### **3.8.4 ARTICLE XXXIV OF THE CALIFORNIA CONSTITUTION**

Applications must demonstrate compliance with Article XXXIV (Article 34) by providing either documentation of Article 34 authority from the local jurisdiction, or a letter from the jurisdiction's City Attorney indicating why Article 34 does not apply. A letter from a private law firm will only be accepted if the local jurisdiction contracts with that firm for the provision of City Attorney services. In this case, the letter must plainly state the law firm's contractual relationship with the local jurisdiction.

Unincorporated Los Angeles County has sufficient Article 34 capacity, therefore, the LACDA will coordinate Article 34 clearance as part of the funding reservation process and will not require Article 34 letters as part of the application process for such projects.

### **3.8.5 SITE CONTROL**

At the time of application, an applicant must demonstrate that it has site control, as defined by CTCAC Regulations. At a minimum, site control must extend through the expected timeline for award of funds. An Agreement to Negotiate Exclusively or an Exclusive Right to Negotiate with a public agency is acceptable site control for this NOFA.

### **3.8.6 COMPLIANCE WITH PROGRAMS**

Applicants must be in compliance with all LACDA fiscal and programmatic requirements, all regulatory agreements with the LACDA, and the requirements of other governmental entities or permitting agencies, including any and all laws, statutes, ordinances, codes,

rules, regulations, directives, writs, injunctions, orders, decrees, rulings, or conditions of approval.

If any of the applicant's existing projects are not in compliance with the LACDA's fiscal and programmatic requirements, the project will not be considered for funding. "Applicant's existing projects" include projects in which any member of the applicant's ownership entity has an interest. Additionally, the LACDA may, in its sole discretion, reject applicants based on past performance.

Fiscal compliance includes but is not limited to: timely submission of requested financial documents, demonstrated provision of social services, proof of property insurance, no delinquent payments, and no loans written off as uncollectible. Programmatic compliance includes but is not limited to: timely submission of annual owner certification documents; satisfactory monitoring findings during occupancy, tenant file review, housing quality standards inspections; and labor compliance reviews. Included in this evaluation are timely completion of projects, and timely correction of any building deficiency noted by any governmental agency.

Compliance must be maintained on an on-going basis for the NOFA application to be eligible for consideration. Applicants that have been notified of non-compliant status will not be eligible for funding in that year's NOFA round and must maintain compliance throughout the year to regain funding eligibility.

Applicants are encouraged to review existing projects with LACDA's Housing Bonds and Asset Management group to determine their organization's compliance status prior to the application deadline.

### **3.8.7 CAPITAL OR PHYSICAL NEEDS ASSESSMENT**

A Capital or Physical Needs Assessment is required for rehabilitation projects and must meet CTCAC regulations.

## **4 LOAN TERMS**

### **4.1 TERMS AND TERM OF COMMITMENT**

Funding awarded under this NOFA is reserved for 12 months, following the Notice of Intent to Award issued by the LACDA.

#### **4.1.1 CAPITAL FUND LOAN TERMS**

All capital funds except NPLH will be made available as a loan under the following terms:

- **Interest Rate:** 3% simple annual.
- **Term:** 55 - 57 years, depending on when financing is introduced to the project.
- **Repayment:** Annual payments based on 50% of residual receipts, as defined in the loan agreement. When other public funding is involved, the LACDA will share its distribution of residual receipts on a pro rata basis.

- **Collateral:** Deed of Trust secured by the land, or leasehold interest and improvements.

The LACDA may include in project financing different funding sources or components that will comprise each loan but will consider the component sources to be one loan amount. The LACDA will base loan priority decisions on the total sum of the loan.

The LACDA is currently considering an affordability period that exceeds 55 - 57 years. Projects may be required to adhere to an extended affordability term, which may be introduced after project financing is approved.

## **4.2 RELEASE OF FUNDS**

The LACDA will generally make capital funds available for disbursement on a draw-down or reimbursement basis, upon closing of the loan and commencement of construction. Disbursement of funds for payment of hard costs during construction will be on a draw-down basis. Disbursement of funds for payment of soft costs during construction will be on a reimbursement basis and requires evidence of prior payment of each soft cost before payment is released.

For tax credit projects, after an award of tax credits is secured, NOFA funds may be made available to pay for eligible predevelopment, or early-stage project expenses. In this case, projects may access up to a maximum of \$1,500,000 in funding from the LACDA. Note that no more than \$1,500,000 will be loaned to a project for predevelopment expenses, whether via a predevelopment loan through the Los Angeles County Housing Innovation Fund (LACHIF), NOFA predevelopment lending (as discussed in this paragraph), or a combination of these products.

## **4.3 FEES**

### **4.3.1 GOOD FAITH DEPOSIT AND LONG-TERM COMPLIANCE MONITORING**

Within 60 days of notification of an award, all applicants must pay a non-refundable good faith deposit of \$7,150. During operations, the LACDA will collect an annual compliance-monitoring payment for each project in the amount of \$7,150, to be paid from project cash flow. The good faith deposit will be credited towards the first year's monitoring cost. For projects only receiving rental assistance through this NOFA, the compliance monitoring fee will be paid until initial project administrative expenses are recovered.

### **4.3.2 TAX-EXEMPT BONDS**

If tax-exempt bond financing is contemplated for a project within the Unincorporated County area, or in an incorporated city that does not have authority to issue bonds, the conduit issuer must be the LACDA (on behalf of the County of Los Angeles). If a project is located within an incorporated city that (a) is providing financing for the project, and (b) is a conduit issuer of mortgage revenue bonds, that city (or Housing Authority) may be the conduit issuer. Exceptions may be granted in cases where an anticipated CalHFA financing product requires CalHFA bond issuance.



When the LACDA is the bond issuer, CDLAC Applications will be reviewed by staff prior to submittal and an initial LACDA application fee of \$5,000 will be assessed each time an application is processed. Additionally, an annual bond administrative fee will be collected by LACDA. Project Sponsors must pay all costs of issuance at bond closing, including, but not limited to, bond counsel, county counsel, underwriter, trustee and financial advisor fees, as well as rating agency fees. Any deposits will be credited toward the cost of issuance at closing.

The initial issuer fee of 25 basis points (0.25%) on the bond amount and the first year of the annual administrative fee (the greater of either 12.5 basis points (0.125%) of the outstanding bond amount or \$6,000) are both paid at bond closing. Project Sponsors will also pay an annual administrative fee of the greater of either 12.5 basis points (0.125%) of the outstanding bond amount or \$6,000 to the LACDA, for the project period to cover the LACDA's ongoing administration and monitoring costs for the project.

In summary, bond fees include the following:

- Application - \$5,000 (paid per CDLAC application)
- Issuer - .25 X total bond amount (one time, paid at bond closing)
- Annual - Greater of either 12.5 basis points (0.125%) of the outstanding bond amount or \$6,000 (annual fee over the 55-year compliance period)

For further information, questions related to the LACDA's bond processes should be sent to [mfbonde@lacda.org](mailto:mfbonde@lacda.org).

#### **4.3.3 MATERIAL CHANGE**

The LACDA must receive written notice of any material changes that are made to the project after application submittal. Material changes include but are not limited to changes or alterations regarding: architectural design, supportive services, development team, lead developer or joint developer structure, ownership, financing structure, supportive services, cash flow, operating subsidies, or changes in development budget line items that show an increase that exceeds 10%. Changes made or proposed to scored items will result in applications being re-scored and then evaluated relative to other applications. Applicants must request and receive the LACDA's written approval for any material changes. If the applicant undertakes material changes without approval, the LACDA reserves the right, in its sole discretion, to withdraw or rescind any funding commitment.

When a material change is made after application evaluation, a fee of \$2,500 (Administrative Fee) is due and payable to the LACDA upon submittal of the material change notification to the LACDA. This Administrative Fee covers the costs related to the LACDA's review of the proposed project. If costs exceed the \$2,500 Administrative Fee, the balance owed must be paid upon written notification from the LACDA. Any remaining funds will be used for administration costs for the continued review and administration of the proposed project.

#### **4.3.4 CHANGES TO STANDARD LOAN DOCUMENTS**

The LACDA strictly limits changes to the standard loan agreement and related documents. Only the sections identified in the "No Changes" letter, which accompanies

the initial draft loan documents, may be negotiated and modified. Submission of an application assumes the applicant and its lenders/investors agree to the standard loan terms and conditions. The LACDA does not have authority to agree to pay attorneys' fees and expenses and will not incorporate any language regarding this matter in the loan documents. Applicants may request a copy of the standard loan documents from the LACDA.

If modifications to the loan documents are requested, a non-refundable deposit of \$2,500 will be due upon written notification to the LACDA of the requested modification. The applicant will be charged all costs incurred by the LACDA. If the costs exceed \$2,500, the balance owed must be paid prior to the execution of the loan agreement.

If changes and modifications are requested in the loan documents, the LACDA reserves the right to require additional documents, actions, and any other information from applicants and related parties in order to evaluate the requested changes, including but not limited to, legal opinions from applicants' attorneys covering such topics as the LACDA considers appropriate, including but not limited to, an opinion that each change requested does not affect the validity or enforceability of the loan documents by the LACDA or the rights of the LACDA to realize on the collateral, guaranties, and indemnities given in connection with the loan documents.

Applicants are advised that requests for changes and modifications to the standard loan documents may be circulated to third parties for review and input, which may delay completion of loan documents. Applicants shall be charged for any associated costs.

#### **4.3.5 UNINCORPORATED LOS ANGELES COUNTY PROJECT FEE WAIVERS**

For Unincorporated Los Angeles County area projects sponsored by a non-profit developer, the LACDA will provide a letter upon written request to waive fees at the Los Angeles County Departments of Regional Planning (DRP) and Public Works (DPW), consistent with Los Angeles County Code. The DRP letter will provide a waiver of entitlement fees and case expediting. The DPW letter will provide a waiver of Building and Safety fees and expedited review of construction documents. Fees previously paid by applicants will not be reimbursed. Please note that fee waivers will trigger California prevailing wage requirements.

## **5 SCORING AND EVALUATION CRITERIA**

Applications that pass Threshold Review will be scored based on committed financing, development team experience, geography, and project type. Applications must score a minimum of 333 points out of the available 555 points to be considered for a funding award.

Because Preservation projects are currently in operation and may not meet specific Special Needs designations, which in many cases require homelessness, projects applying for the Preservation set-aside will have the points associated with Special Needs development team experience credited to the project.

Scoring is used to determine whether a project is eligible for funding, after which projects will be evaluated based on meeting housing goals. The LACDA will determine project funding by taking into account the following factors:

- Whether a project is supported by the County's Affordable Housing and Sustainable Communities workgroup using County-owned land, or is part of a County-supported effort;
- The geographic distribution of applications (by Service Planning Area or Supervisorial District);
- The total development cost on a per-unit basis;
- Located in a high or highest resource area or an identified area of displacement;
- The total number of units being produced, population served, and percentage of units for each population type; and
- The number of LACDA projects in application, predevelopment, or construction by the applicant.

APPLICATION SCORING CRITERIA SUMMARY		
Category	Max. Points	Scoring
<b>Financing</b>		
Committed Permanent Public Funds	100	5 pts for every 1% public funds finance TDC Projects in unincorporated LA County or County-owned land receive full points
Committed Operating Support for Special Needs Units	60	3 pts for every 5% of Special Needs units with committed operating support Preservation projects are awarded full points for Committed Operating Support for Special Needs Units Projects in unincorporated LA County or LACDA participating jurisdiction that are applying for rental assistance through this NOFA will receive points as though rental assistance was committed
MAXIMUM FINANCING POINTS	160	
<b>Development Team</b>		
Developer Experience – Affordable	50	See Section 5.2 for point allocation Preservation projects are awarded full points for PM Experience-Special Needs and Managing GP Special Needs.
Managing GP Experience – Affordable	25	
Managing GP Experience – Special Needs	25	
PM Experience – Affordable	25	
PM Experience – Special Needs	45	
Architect Experience	25	
MAXIMUM DEVELOPMENT TEAM POINTS	195	
<b>Geography</b>		
Unincorporated LA County, HOME Participating Cities, and projects developed on County-owned land	100	
Other cities outside of the City of Los Angeles	50	

APPLICATION SCORING CRITERIA SUMMARY		
Category	Max. Points	Scoring
MAXIMUM GEOGRAPHY POINTS	100	
<b>Project Type</b>		
Special Needs project	100	49% or more of total units target a Special Needs population (excluding manager's unit(s)).
<b>MAXIMUM APPLICATION POINTS</b>	<b>555</b>	
<b>POINTS NEEDED FOR FUNDING ELIGIBILITY</b>	<b>333</b>	

## 5.1 FINANCING

### 5.1.1 COMMITTED PERMANENT PUBLIC FUNDS

- Projects located in Unincorporated Los Angeles County, or projects that include County-owned land will receive full points in this section.
- Points will be awarded based on non-LACDA permanent public funds committed to the project. Funding will be considered committed if the following is included in the NOFA application: (1) a funding commitment from the agency's Executive Director or other decision-making authority, or (2) a letter from the awarding agency stating that funding is approved but not yet committed, with the commitment expected upon a date certain. Should funding approval not be granted, a recommendation for NOFA funding will be revoked and funds will be awarded to the next eligible project.
- Five (5) points will be awarded for every one percent (1%) of total development cost financed with committed public funds, up to a maximum of 100 points. For example, where non-LACDA public funds equal 15% of total development cost, the project would receive 75 points.

### 5.1.2 COMMITTED OPERATING SUPPORT FOR SPECIAL NEEDS UNITS

- Projects located in Unincorporated Los Angeles County, or an LACDA participating jurisdiction that are applying for rental assistance through this NOFA will receive points as though the rental assistance was "committed".
- Points will be awarded based on operating support currently committed to the project, consistent with the standards defined by CTCAC Regulations.
- Three (3) points will be awarded for every five percent (5%) of Special Needs units with committed operating support, up to a maximum of 60 points. For example, if a project has 20 Special Needs units and 10 of these units have a committed, operating subsidy, the project would receive 30 points.

## 5.2 DEVELOPMENT TEAM

To maximize scoring, the applicant's development team must include entities with experience with affordable, rent-restricted, and special needs housing units. The application will be scored based on the experience of the following team members:

- Developer – Affordable Housing
- Managing General Partner – Affordable Housing and Special Needs Affordable Housing

- Property Management Company – Affordable Housing and Special Needs Affordable Housing
- Architect – Affordable Housing Project of the Type Proposed (New Construction or Rehabilitation)

#### **5.2.1 DEVELOPER EXPERIENCE - AFFORDABLE**

- Points will be awarded based on the experience of either the Lead or Joint Developer with affordable, rent-restricted, and special needs projects, as follows:
  - 3-6 projects in service more than 3 years = 30 points
  - 7 or more projects in service more than 3 years = 50 points
- Projects must be affordable, mixed-population, or special needs multifamily rental developments greater than 10 units in size and subject to a recorded regulatory agreement.
- The Lead or Joint Developer entity that is receiving experience points must be identified in the application. Applicants shall use a partnership name, or other designations in the application materials.
- To receive points under this category projects must be in operation for over three (3) years. If an applicant seeks points for projects previously owned by the Developer, the ending date of ownership or participation in the project must be no more than 10 years from the application deadline. If the project lists co-Developers, experience points will be awarded based on the most experienced member.

#### **5.2.2 MANAGING GENERAL PARTNER EXPERIENCE - AFFORDABLE**

- Points will be awarded based on the experience of the Managing General Partner with affordable, rent-restricted projects, as follows:
  - 3-6 projects in service more than 3 years = 18 points
  - 7 or more projects in service more than 3 years = 25 points
- Projects must be affordable multifamily rental developments greater than 10 units in size and subject to a recorded regulatory agreement.
- The Managing General Partner is the entity that will bear day-to-day ownership responsibilities for the project.
- To receive points under this category projects must be in operation for over three (3) years. If an applicant seeks points for projects previously owned by the Managing General Partner, the ending date of ownership or participation in the project must be no more than 10 years from the application deadline. If the project lists co-Managing General Partners, experience points will be awarded based on the most experienced member.

#### **5.2.3 MANAGING GENERAL PARTNER EXPERIENCE - SPECIAL NEEDS**

- Points will be awarded based on the experience of the Managing General Partner with affordable, rent-restricted projects that include targeted special needs units, as follows:
  - 3 projects in service more than 3 years = 15 points
  - 4 or more projects in service more than 3 years = 25 points
- Projects must be affordable multifamily rental developments greater than 10 units in size and subject to a recorded regulatory agreement.

- To qualify for points, a project must dedicate at least 10% of its units to a Special Needs population, as defined in this NOFA, with the restriction reflected in a recorded regulatory agreement.
- The Managing General Partner is the entity that will bear day-to-day ownership responsibilities for the project.
- To receive points under this category projects must be in operation for over three (3) years. If an applicant seeks points for projects previously owned by the Managing General Partner, the ending date of ownership or participation in the project must be no more than 10 years from the application deadline. If the project lists co-Managing General Partners, experience points will be awarded based on the most experienced member.
- Projects applying for the Preservation set-aside will have full points associated with Special Needs development team experience credited to the project.

#### **5.2.4 PROPERTY MANAGEMENT EXPERIENCE - AFFORDABLE**

- Points will be awarded based on the experience of the Property Management Company with affordable, rent-restricted projects, as follows:
  - 6-10 projects managed over 3 years = 18 points
  - 11 or more projects managed over 3 years = 25 points
- To obtain points for projects previously managed, the ending date of the property management role must be no more than 10 years from the application deadline. In addition, the property management experience with a project shall not pre-date the project's placed-in-service date.

#### **5.2.5 PROPERTY MANAGEMENT EXPERIENCE - SPECIAL NEEDS**

- Points will be awarded based on the experience of the Property Management Company with affordable rent-restricted projects that include Special Needs units, as follows:
  - 2-3 Special Needs projects managed over 3 years = 30 points
  - 4 or more Special Needs projects managed over 3 years = 45 points
- To qualify for points, a project must dedicate at least 10% of its units to a Special Needs population, as defined in the NOFA Special Needs Target Populations and Affordability Requirements sections, with the restriction reflected in a recorded regulatory agreement.
- Projects applying for the Preservation set-aside will have full points associated with Special Needs development team experience credited to the project.

#### **5.2.6 ARCHITECT EXPERIENCE**

- Points will be awarded based on the experience of the Architect with affordable, rent-restricted projects of the type proposed in the application, as follows:
  - 2-4 projects = 12 points
  - 5-9 projects = 18 points
  - 10 or more projects = 25 points
- To qualify, projects must be multifamily rental affordable housing developments of over 10 units that are subject to a recorded regulatory agreement.
- Experience points will only be awarded for projects of the type proposed. For example, if a proposed project is new construction, only new construction projects may be used to evidence experience.

- One (1) LACDA-funded affordable multifamily rental project may be used to satisfy the minimum requirement of two (2) projects, at the discretion of the LACDA.

The experience of development team members and available points is summarized as follows:

<b>DEVELOPMENT TEAM EXPERIENCE SUMMARY</b>	
No. of Projects	Available Points
<b>Developer – Affordable</b>	
3-6	30
7+	50
<b>Managing General Partner – Affordable</b>	
3-6	18
7+	25
<b>Managing General Partner – Special Needs</b>	
3	15
4+	25
<b>Property Management – Affordable</b>	
6-10	18
11+	25
<b>Property Management – Special Needs</b>	
2-3	30
4+	45
<b>Architect</b>	
2*-4	12
5-9	18
10+	25

\*Or 1 LACDA-funded affordable multifamily rental project

### 5.3 GEOGRAPHY

Not all projects will receive points in this category. Projects will be awarded points based on the location of the property, as follows:

- Projects located in Unincorporated Los Angeles County, projects located in the County's HOME participating cities, and projects developed on County-owned land (regardless of jurisdiction) will be awarded 100 points.
- Projects located in jurisdictions outside of the City of Los Angeles will be awarded 50 points.

### 5.4 PERCENTAGE OF SPECIAL NEEDS UNITS

- Special Needs Project - 100 points will be awarded if 49% or more of a project's units (excluding any manager's unit) are reserved for a Special Needs population. To receive 100 points, the Supportive Services Plan must be consistent with the project budget documents.

## **5.5 SUPPORTIVE SERVICES PLAN**

All applicants must prepare a Supportive Services Plan that is appropriate for the project's population(s), as described in Supportive Services Criteria attachment. Projects with more than one target population must address the supportive service needs of all tenants.

The Supportive Services Plan will not be scored, but will be evaluated for quality, completeness, and inclusion of required elements. Projects may receive a Final Conditions List that will detail areas in the Supportive Services Plan that must be revised prior to the release of any loan funds. To guarantee the fulfillment of the required Supportive Services Criteria, the LACDA may withhold loan funds until all issues are addressed to the LACDA's reasonable satisfaction.

The Supportive Services Plan will be evaluated against the Supportive Services Criteria attachment that details program requirements, staffing, and the services provided for each target population. The Service Criteria Matrix and Service Definitions outlined in the Supportive Services Criteria attachment identify those services that are required to be addressed at the time of NOFA application and the services required by the time of construction loan closing.

The Supportive Services Plan review includes the following components in the NOFA application:

- Supportive Services Narrative
- Supportive Staffing and Budget
- Supportive Services Commitments
- Property Management Plan

### **5.5.1. SUPPORTIVE SERVICE PLAN APPLICATION REQUIREMENTS**

Depending on the project's target population(s), the applicant is required to complete certain components of the Supportive Services Plan as detailed in the table below. Note: projects with general affordable or other non-homeless Special Needs units must complete the service plan application components, as indicated in applicable columns of the table.



<b>Service Plan Application Component</b>	<b>Required for Homeless Special Needs Units</b>	<b>Required for General Affordable Units</b>	<b>Required for Other Non-Homeless Special Needs Units</b>
<b>Lead Service Provider Experience Chart</b>	No	No	Yes
<b>Property Management Experience Chart</b>	Yes	Yes	Yes
<b>Supportive Services Narrative</b>	Yes, as indicated.	Yes	Yes
<b>Target Population Matrix</b>	Yes	Yes	Yes
<b>Supportive Services Staffing</b>	Yes	Yes	Yes
<b>Supportive Services Commitments</b>	No	Yes	Yes
<b>Property Management Plan</b>	Yes	Yes	Yes

### **5.5.2 SUPPORTIVE SERVICES NARRATIVE**

The supportive services narrative consists of responses to the questions identified in the application for funding and the supporting documents. The Supportive Services Narrative includes questions for:

- Need
- Resident Selection
- Services Provision
- Staffing
- Resident Engagement and Participation
- Outcomes
- Green Education

Supporting documents for the Supportive Services Narrative include:

- Target Population Matrix
- Supportive Services Staffing
- Supportive Services Commitments

### **5.5.3 SUPPORTIVE SERVICES BUDGET**

Los Angeles County Measure H funds will be used to provide Supportive Services to homeless households and a budget for such household is not required. However, a Supportive Services budget is required for general affordable housing and non-homeless Special needs units and must demonstrate that the level of funding is adequate for the services to be provided and show project operating revenue as a source if a Supportive Services expense is included in the operating budget. The overall financial feasibility of

the services budget will be considered regardless of the sources of funding. The Budget section consists of:

- Supportive Services Staffing - Staffing budget shall reflect 1:20 staff-to-client ratio for single Special Needs adult households, 1:15 staff-to-client ratio for Special Needs families with children in the household, and 1:40 to 1:75 staff-to-client ratio for general affordable units.
- Supportive Services Commitments

DHS will fund ICMS for Special Needs units – at a rate of \$450/door/month, which covers all costs (e.g., personnel, administrative) associated with providing the required services as outlined in the Supportive Services Criteria attachment. Therefore, any staffing costs or allowable administrative expenses paid by cash flow will only be attributable to residents of general affordable units, or units not covered by County-funded services.

#### **5.5.4 PROPERTY MANAGEMENT AND TENANT SELECTION PLAN**

The role of housing stability in preventing and ending homelessness is crucial. Special Needs households and households experiencing homelessness often encounter barriers to housing beyond just their ability to pay rent. Property managers and owners must recognize that supportive housing programs are intended to house people whose often damaged credit, poor rental histories, and/or criminal backgrounds disqualify them from traditional or standard tenant screening processes.

Supportive housing programs are successful in serving the people for whom they are designed only when these circumstances do not raise insurmountable barriers to accessing housing. To the extent permitted by the rules and regulations related to the type of housing, housing providers should adopt lenient and flexible criteria regarding these common barriers when creating a tenant selection plan. The development of a Tenant Selection Plan will be a collaborative effort between the LACDA, affected County Departments, the management agent, and the owner. Please note the following:

1. Poor rental and credit history may be evidence of financial or personal stress that will be alleviated by living in affordable supportive housing. As a result, an applicant's poor rental or credit history may not be a reliable indication of future behavior. A screening process that allows individuals to demonstrate mitigating circumstances and considers factors like a support structure, the potential benefit of available services, and an affordable rent level may help to mitigate unnecessary barriers to housing. For example, requiring one (1) year or more of consecutive housing history or a good credit score would likely be an unnecessary barrier for an applicant for supportive housing.
2. Criminal backgrounds can raise additional hurdles in a population experiencing homelessness. Individualized screening processes will help housing providers better distinguish between a criminal background that indicates a demonstrable risk to resident safety and/or property and one that does not. An applicant that does not present risks to resident safety or property should not be screened out by the property management agency

Property managers and owners must employ a Housing First model to tenant selection. Housing First approaches quickly connect people experiencing a housing crisis with

permanent housing without preconditions (e.g., sobriety, treatment, or service participation requirements) and the supports needed to maintain housing.

The Property Management and Tenant Selection Plans must identify, describe, and utilize Housing First and low-barrier tenant selection processes that prioritize those with the highest needs for available housing. Additionally, plans must address:

1. Applicant eligibility and screening standards, and differences between outreach for Special Needs and general population applicants.
2. The use of the local Coordinated Entry System (CES) for referrals of homeless special needs tenants.
3. Confidentiality.
4. Substance abuse policy.
5. Communication between property manager and services coordinator/case manager.
6. Eviction policies and eviction prevention procedures.
7. Process for assisting tenants to apply for utility rate assistance programs, if available.
8. How applicants and residents will be assisted in making reasonable accommodation requests, in coordination with the services provider and persuasive to outside entities, such as Housing Authorities, to ensure that persons with disabilities have access to and can maintain housing.
9. Consumer rights specific to adaptability features available in each unit.
10. The type of Green Education to be offered to residents and the ways that residents will be made aware about the project's green building elements.
11. Housing First practices, consistent with the core components set forth in Welfare and Institutions Code Section 8255(b), which include:
  - Tenant screening and selection practices that promote accepting applicants regardless of their sobriety or use of substances, completion of treatment, or participation in services.
  - Applicants are not rejected on the basis of poor credit or financial history, poor or lack of rental history, criminal convictions unrelated to tenancy, or behaviors that indicate a lack of "housing readiness."
  - Supportive services that emphasize engagement and problem solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals.
  - Participation in services or program compliance is not a condition of permanent housing tenancy.
  - Tenants have a lease and all the rights and responsibilities of tenancy, as outlined in California's Civil, Health and Safety, and Government codes.
  - The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction.
  - Use of a coordinated entry system that prioritizes eligible tenants based on criteria other than "first-come-first-served," including, but not limited to, the duration or chronicity of homelessness, vulnerability to early mortality, or high utilization of crisis services.
  - Case managers and service coordinators who are trained in and actively employ evidence-based practices for client engagement, including, but not limited to, motivational interviewing and client-centered counseling.

- Services are informed by a harm-reduction philosophy that recognizes drug and alcohol use and addiction as a part of tenants' lives, where tenants are engaged in nonjudgmental communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well as connected to evidence-based treatment if the tenant so chooses.
  - The project and specific unit may include special physical features that accommodate disabilities, reduce harm, and promote health and community and independence among tenants.
12. Policies and practices to facilitate the implementation of reasonable accommodation policies.
  13. Policies and practices to facilitate Voluntary Moving On strategies (<https://files.hudexchange.info/resources/documents/PHA-Moving-On-How-To-Guide.pdf>), consistent with best practices for supportive housing programs and with California State Department of Housing and Community Development requirements for supportive housing projects. When community resources allow (e.g., tenant-based vouchers are available), Voluntary Moving On expands a community's supportive housing capacity by helping persons who no longer need or want intensive services to move to alternative affordable housing with services, thereby creating supportive housing vacancies for other special needs persons in need.

The Property Management Plan will be assessed for its applicability to the proposed project and target population and will be evaluated against the criteria above and in the Supportive Services Supplemental Document. It must be consistent with other assertions throughout the Supportive Services Plan (e.g., outreach to applicants, eviction policies, etc.) and must demonstrate that there is a system in place for coordination between the goals of the project's supportive services and property management. Projects with federal funding (e.g., project-based Section 8 rental assistance) are exempt from harm reduction requirements that conflict with federal drug laws.

## **6 UNDERWRITING**

### **6.1 FINANCIAL FEASIBILITY**

Proposed projects must demonstrate financial feasibility for both development and operations, assuming the LACDA's underwriting standards. For projects that contain commercial components, the sources and uses of funds contained in the NOFA application must contain detailed line items and apportioned amounts for commercial components that are separate from residential components and shall not include tenant improvement costs. The income from the residential portion of the project shall not be used to support the commercial portion and the commercial income shall not support the residential portion of the project. Applicants must provide an analysis of the anticipated commercial income and expenses.

Projects must use reasonable assumptions for tax credit pricing. A tax credit investor's letter of interest is not required at the application stage, but if available, applicants shall

use this pricing in project financing assumptions. If a letter of interest is not available, applicants shall use pricing that is reasonably related to the Los Angeles County market. The LACDA will not approve a project based on assumptions that are unreasonable or inconsistent with industry standards.

The LACDA's underwriting guidelines will be used to evaluate the project.

## **6.2 MINIMUM OPERATING EXPENSES**

Projects must assume the LACDA's minimum operating expenses. The LACDA will accept operating expenses below these minimums if justified with audited financial statements for the last two (2) years for two (2) comparable properties currently owned by the applicant. The properties must be similar in size, type, tenant population, and location to the proposed project. The LACDA reserves the right to request additional operating expense documentation during the underwriting phase. Projects that involve more than one (1) tenant population may assume a pro rata blended operating expense based on the LACDA's minimums.

<b>TABLE 6.2 - Minimum Operating Expenses</b>			
<b>Project Size</b>	<b>Family Units</b>	<b>Senior Units</b>	<b>Special Needs Units</b>
Up to 50 units	\$6,200	\$5,500	\$6,500
51+ units	\$5,800	\$5,200	\$6,100

The LACDA's operating expenses include property taxes but exclude the following:

- 1) Replacement/operating reserve deposits
- 2) Debt service
- 3) Supportive services
- 4) Asset management fee
- 5) Partnership management fee
- 6) Deferred developer fee

## **6.3 SUPPORTIVE SERVICE COSTS**

Only the cost of case managers and resident service coordinators included in the Supportive Services Plan may be paid from cash flow, as needed and to the extent financially feasible. The LACDA, in its sole discretion, will determine the reasonableness of these costs, considering the proposed staffing levels. DHS will fund ICMS for homeless Special Needs units at a rate of \$450/door/month. If the project cash flow includes a supportive service expense line item, the project sponsor must identify that this line item covers units and residents that are not supported by the County of Los Angeles.

## **6.4 PARTNERSHIP MANAGEMENT FEE**

An annual Partnership Management Fee of up to \$15,000 may be paid from project cash flow, prior to residual receipts payments. This fee only may be paid during the tax credit compliance period and includes payments to both the general partner(s) and the limited partner. Payments above this limit may be made from the borrower's portion of residual receipts. Unpaid Partnership Management Fees cannot be accrued.

## **6.5 OPERATING SUBSIDY**

Projects that propose to rely on a project-funded cross-subsidy to support the expenses of special needs units, shall assume the following in demonstrating long-term operational feasibility:

- Rents for Special Needs units shall be set at 30% of Supplemental Security Income (SSI) limits. Rents may be set higher in the unusual circumstance where a Special Needs population may earn higher incomes. Applicants shall submit evidence to demonstrate the ability of the Special Needs population to pay higher rents.
- Rents for non-Special Needs units shall be set no higher than 10% below market. Applicants will be required to submit a market study confirming the assumptions meet this threshold prior to receiving a commitment of funds.

## **6.6 FURNISHINGS FOR HOMELESS UNITS**

Projects that propose to serve homeless households must include costs to furnish all such units in the proposed development budget. At a minimum the project shall provide a bed and dresser in each bedroom, a dining table with chairs, sofa, coffee table and a lamp.

## **6.7 ONSITE MANAGER**

At a minimum, one (1) on-site manager is required for all projects. The on-site manager must be full-time and reside at the project.

# **7 ADMINISTRATIVE PROVISIONS**

## **7.1 GENERAL LACDA REQUIREMENTS**

All projects receiving funding under this NOFA must adhere to the General LACDA Requirements, which are made part of this NOFA.

## **7.2 LACDA'S RIGHTS AND RESPONSIBILITIES**

The LACDA reserves the right to change the requirements and policies described in this NOFA at the LACDA's sole discretion. The LACDA is responsible only for that which is expressly stated in the NOFA documents, any authorized written addenda, and any posted Questions and Answers. Such addenda shall be made available to each person or organization via the LACDA's NOFA application website. Should any such addenda require additional application information that was not previously requested, failure to address the requirements of such addenda may result in the application not being considered, as determined at the sole discretion of the LACDA. It is the responsibility of applicants to ensure, prior to submission, that their application reflects the most recent addenda information, program requirements, and policies. By submission of an application, each applicant acknowledges receipt of all addenda, if any, that are emailed or posted on the LACDA's website. The LACDA is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf if those representations conflict with NOFA requirements. Addenda to this NOFA will be available for download at the LACDA's Multifamily Rental Housing and NOFA online application webpages.

### **7.3 LACDA'S DISCRETION**

The LACDA reserves the right, in its sole discretion, to disqualify any application that is incomplete, out of order, lacks required attachments, or contains other content errors, inconsistencies, misrepresented information, or other deficiencies. Forms provided in the NOFA application must be used and information provided otherwise may be disregarded at the LACDA's discretion. The LACDA reserves the right to waive disparities in a proposal if the sum and substance of the application is present. Furthermore, the LACDA reserves the right to withdraw or rescind this NOFA at any time without prior notice.

### **7.4 COST OF APPLICATION PREPARATION**

The cost of application preparation shall be borne by the applicant. In no event shall the LACDA be liable for any expenses incurred in the preparation and submission of the application.

### **7.5 APPLICATION IS PROPERTY OF THE LACDA**

Once submitted, each application becomes the property of the LACDA and becomes a public record. The LACDA is not liable for the disclosure of any information contained in an application. Any information that applicants do not wish to disclose to the public must be clearly marked "confidential." A blanket statement of confidentiality or the marking of every page of the application as confidential shall not be deemed sufficient notice of exception. Applicants must specifically label only those portions of the application that are confidential in nature and notify the LACDA that confidential information is included.

### **7.6 OTHER FUNDING APPLICATIONS BY NOFA APPLICANTS**

The LACDA reserves the right to request any funding applications submitted by NOFA applicants to other funding sources. Funding applications include all such requests for financing associated with the proposed project. Failure to provide such information upon request may result in loss of funding allocation, withholding of funds, or the issuance of a noncompliance letter.

### **7.7 NONCOMPLIANT/DEBARRED CONTRACTORS**

Applications may be withheld from funding consideration in the event that the applicant (or any of its principals, or partners) is currently in arrears or delinquent in payment of debt to the LACDA, deemed to be noncompliant with the requirements of any agreement with the LACDA, or included on any County of Los Angeles, HUD, or other public agency debarment list.

### **7.8 INSURANCE REQUIREMENTS**

Applicants must document that they procure and maintain insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work by the applicant, its agents, representatives, employees, or subcontractors. The LACDA's Insurance Requirements are made part of this NOFA.

### **7.9 PET-FRIENDLY HOUSING ORDINANCE**

The County of Los Angeles [Pet-Friendly Housing Ordinance](#) authorizes tenants to have at least one pet in a rental unit in new or rehabilitated multifamily housing developments financed, in whole or in part, by the County and/or the LACDA on or after February 6,

2020, consistent with all federal and State laws and further requires landlords to maintain and provide a copy of pet policies to tenants. Projects funded through this NOFA are required to adhere to this ordinance. The LACDA will provide an implementation guide to funded projects.

## **7.10 SECTION 3**

All projects receiving an award of HOME funds, PBVs, and/or PBVASH Vouchers must comply with HUD's Section 3 requirements. The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by financial assistance from HUD shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons. Recipients of an award of HOME funds will be required to complete Section 3 compliance forms prior to execution of a loan agreement. Applicants requesting HOME funds, PBVs, and/or PBVASH Vouchers must provide a written strategy demonstrating understanding of the Section 3 requirements and detailing how they will ensure that, when employment or contracting opportunities are generated because the project or activity necessitates the employment of additional persons or the award of contracts for work, preference shall be given to low- and very low-income persons or business concerns in the neighborhood. "Neighborhood" is defined in 24 CFR Part 92, Subpart A as "a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government."

## **7.11 PREVAILING WAGES**

### **7.11.1 STATE PREVAILING WAGES**

Section 1720 of the California Labor Code requires payment of California State Prevailing Wages for certain projects. Applicants must provide an explanation in the NOFA application as to whether the project will comply with payment of State Prevailing Wages, especially if due to another agency's funding sources requiring its payment. An attorney's opinion must be included as part of the application if the applicant states that the project is exempt from the payment of State Prevailing Wages.

### **7.11.2 DAVIS-BACON FEDERAL WAGES**

The Davis-Bacon Act of 1931, as amended, requires payment of Davis-Bacon Wages in HOME-funded projects with 12 or more HOME-assisted units, or in projects receiving nine (9) or more PBVs or PBVASH Vouchers. In addition, contractors for such projects are required to file payroll reports and to meet other administrative and labor standards requirements.

## **7.12 GENERAL CONTRACTOR SELECTION AND CONSTRUCTION CONTRACTS**

When seeking a General Contractor, applicants must solicit a minimum of three (3) bids for comparison of pricing and services offered. General Contractors working on funded



projects must use a Guaranteed Maximum Price Contract (GMAX) wherein the basis for payment is the cost of the work plus a fee. The construction contract shall include an overall cost limitation acceptable under the LACDA's underwriting criteria. All construction contracts shall clearly state that the sharing of cost savings above and beyond the maximum General Conditions, Overhead and Profit allowed by the LACDA's underwriting criteria are not allowed.

Construction contracts shall not include costs associated with tenant improvements for commercial space associated with the project. Project budgets shall not include tenant improvement costs and project funds (regardless of source) shall not be used for commercial tenant improvement costs.

### **7.13 CONSTRUCTION SIGNAGE**

Projects receiving funding through this NOFA must acknowledge this assistance with signage at the site. Construction signage must be approved by the LACDA prior to placement at the project site. If any financial assistance from HUD is included in any project, the construction sign must also acknowledge this HUD assistance.

### **7.14 FAIR HOUSING, ACCESSIBILITY REQUIREMENTS, MARKETING, AND LEASE-UP**

All projects receiving funding under this NOFA must adhere to the LACDA's Fair Housing and Accessibility Requirements included with this NOFA. The project must be constructed and maintained in accordance with the 2010 ADA Standards for Accessible Design in addition to meeting all requirements of the California Building Code (Chapters 11A and 11B).

Projects that receive federal assistance in any form, including, but not limited to, HOME funds, PBVs, or PBVASH Vouchers, must include accessible units that comply with Section 504 of the Rehabilitation Act. All projects must incorporate affirmative marketing, tenant selection, and reasonable accommodation practices that fully comply with the federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and the Unruh Civil Rights Act. Projects that receive federal assistance must also agree to comply with tenant leasing and notification requirements of the Violence Against Women's Act (VAWA). It is the applicant's responsibility to determine the applicable accessibility standards triggered by funding, rental subsidies, or services provided by any lender or agency.

Special Needs units must be distributed throughout the project and shall not be aggregated on certain floors or set aside only in specified areas of a building.

Funded projects will be required to attend or participate in a Preliminary Marketing and Lease-Up Meeting prior to or immediately following the disbursement of any NOFA funds in order to outline, discuss, and/or receive LACDA approval of the following: affirmative marketing plan and tenant selection processes, including, but not limited to, tenant lotteries, coordinated assessment and entry, priority leasing for accessible units, wait list management, and tenant application and selection processes. Projects that propose or implement local preferences will not be eligible for funding. An exception to this

prohibition may be made for projects in a jurisdiction with its own Continuum of Care. Projects of this type should notify the LACDA Point of Contact for additional direction and information during the application period.

Subsequent to the Preliminary Marketing and Lease-Up Meeting, and at least 90 days prior to the Lease-Up and Application Phase, the project must submit to and receive approval from the LACDA for Affirmative Marketing and Property Management Plans. The project must also fully register all units with the Los Angeles County Housing Resource Center (LAC-HRC) website ([www.Housing.LACounty.gov](http://www.Housing.LACounty.gov)), including listings of special needs and accessible units. Special Needs Units may be listed on the Restricted Access portion of the LAC-HRC website. Registration on the LAC-HRC's partner websites (Cities of Los Angeles and Pasadena) will constitute compliance. In no event shall any lease applications be distributed prior to the project's provision of evidence of website registration. The availability status of registered units must be maintained and updated during and subsequent to the initial tenant lease-up process.

In all instances related to affirmative marketing, community presentations, public events, provision or posting of printed material, and listing on electronic media, including social media, the Affirmative Marketing Plan must address methodologies to utilize information and Communication Technology that is accessible to persons with sensory needs, or other special needs requiring assistance or reasonable accommodation. Any listing of a project information telephone number must also include a TTY/TTD or Relay Service phone number. In all instances related to public meetings, application distribution or receipt, or any other marketing, application, tenant selection or lease-up event, the project must take into account and plan for accessibility and reasonable accommodation for all persons. Based on the specific location, demographics, and tenant selection processes, the Affirmative Marketing Plan shall also include plans to assist and market to persons or families with limited English proficiency.

See the Affirmative Fair Housing and Accessibility Requirements attachment for full information.

### **7.15 DENSITY BONUS UNITS**

The LACDA will issue density bonus covenants for Unincorporated Los Angeles projects that have received a density bonus through DRP. Any density bonus covenant and agreement issued by the LACDA will not be subordinate to other project financing. Applicants are encouraged to discuss this with other project finance partners early in the project lifecycle.

### **7.16 WITHHOLDING OF FUNDS UNTIL PERMANENT FINANCING**

The LACDA will withhold 1.5% of the loan amount, up to a maximum of \$100,000, until conversion to permanent financing is complete. Any withheld loan amount will only be released upon the full satisfaction of all Permanent Financing Conditions, as identified in the LACDA's loan agreement.

## **7.17 COMPLIANCE WITH ALL CONDITIONS PRIOR TO LOAN CLOSING**

All requirements and conditions set forth in this NOFA and the loan documents must be satisfied, as determined by the LACDA, in its sole discretion, prior to disbursement of any loan funds. Applicants will be required to address all deficiencies identified during the application scoring process prior to release of loan funds. The LACDA may withhold all or part of its loan funds until all deficiencies are addressed, to the reasonable satisfaction of staff. Applicants will also be required to address all conditions of funding, if any are identified by the LACDA's Loan Committee.

The applicant represents and warrants that all materials and information provided in connection with this NOFA are true and correct at all times, from the date of submission to the LACDA and throughout the award process, loan closing, and term of the loan. By way of example, but not by limitation, some of the conditions, representations, or warranties that must be at all times true include:

- Applicant must be in good standing and have the authority and organizational power to enter into the documents, agreements, and certifications related to the NOFA and any resulting loan.
- Applicant and its partners, principals, or affiliates must not be or include any persons or companies who are in non-compliance with the requirements of any agreement with the LACDA or be listed on any County of Los Angeles or HUD debarment lists.
- Applicant and its partners, principals or affiliates cannot be in default or in violation of any of its obligations under the NOFA, or any loan documents, contracts, agreements, court orders or laws, and submitting for the NOFA and providing the information and entering into the agreements contemplated by the NOFA will not cause a default or violation.
- Applicant's financial condition shall not have declined to the point of insolvency.
- There shall be no change in the ownership, management or control (direct or indirect) of applicant, which is not promptly disclosed to and approved by the LACDA.
- Applicant and its partners, principals, or affiliates shall not be subject to any binding, agreement, suit, order, or law which would be violated if applicant proceeds with the transactions contemplated by the NOFA, or the loan documents.
- There shall be no discovery of any preexisting event or circumstances and there shall be no material adverse change in the condition or suitability of the project site, the feasibility of the project, completion date, or the cost of the project that is not promptly disclosed to and approved by the LACDA.
- Applicant and its partners, principals or affiliates shall not be subject to any litigation, suit, arbitration or administrative proceeding that may adversely affect the ability of applicant to perform any of its obligations under or contemplated by the NOFA.
- Once met, the project shall continue to meet all requirements of this NOFA.

## **7.18 EVENTS OF DEFAULT**

Under the terms of the documents for any loan made pursuant to this NOFA, the following events may cause the LACDA to declare the applicant in default:

- Unfunded project or operating cost overruns.

- Breach of covenants, including affordability requirements.
- Failure to maintain the property.
- Failure to make loan payments.
- Failure to meet all accessibility requirements.
- Failure to submit audited financial statements by a certified public accountant and the borrower.
- Failure to abide by prevailing wage requirements (as applicable).
- Failure to maintain appropriate insurance coverage.
- Failure to reasonably abide by project and/or construction schedules.
- Bankruptcy, dissolution, or insolvency of the borrower or general partner of borrower's partnership.
- Appointment of a receiver or trustee or general assignment for the benefit of creditors.

This list is representative and not all-inclusive.

## **7.19 LOCAL AND TARGETED WORKER HIRING PROGRAM**

All projects must utilize best efforts to achieve the Local Resident hire goal of 30 percent of total California construction labor hours and a Targeted Worker hire goal of 10 percent of total California construction labor hours. Hours worked by a Targeted Worker who is also a Local Resident may be applied towards the 30 percent Local Resident hire goal.

The Contractor shall ensure posting a wide array of its construction job advertisements and/or seeking the assistance of a community service provider organization, if necessary, to ensure the best efforts hiring requirement provided for Local Workers is met in accordance with this Policy.

Exceptions for projects in jurisdictions enforcing their own local hiring policy, and for projects with federal or State funding prohibitions on geographic preferences will be determined on a case-by-case basis by Chief Executive Office (CEO), in consultation with the County Board of Supervisors Offices and County Counsel, and the exemption shall be stated in the corresponding Board letter.

Affordable housing projects financed with federal funds subject to 24 CFR Part 135 will follow local hiring and training guidelines promulgated through Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain Housing and Urban Development (HUD) financial assistance can be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

### **LOCAL RESIDENT**

Local Resident hiring uses a two-tiered preference system.

A ***Tier I Qualified Local Resident*** is defined as a County resident whose primary residency is:

- 1) Within five (5) miles of the proposed project site; and
- 2) Is within a qualifying Zip Code (see definition below). If a qualifying Zip Code is partially located within the 5-mile radius, then the entire Zip Code is considered as Tier I Zip Code, and workers living in that entire Zip Code area may qualify as Tier I hire.

A **Tier 2 Qualified Local Resident** is defined as a County resident whose primary residency is:

- 1) Within a qualifying Zip code; and
- 2) That qualifying Zip Code is beyond five (5) miles of the proposed project site.

A **qualifying Zip Code** is defined as a Zip Code within the County of Los Angeles, where either:

- 1) The average percentage of households living below 200 percent of the Federal Poverty Level (FPL) for that individual's primary residency's Zip Code is greater than the County average for such households; or
- 2) The Zip Code is one of 11 additional Zip Codes determined by the Board on October 6, 2011 to be a Zip Code where at least 30 percent of the population is living in poverty, and with an unemployment rate of at least 150 percent of the national average.

A Local Resident is defined as an individual living within the Tier 1 or Tier 2 ZIP Codes of Los Angeles County. Before employing worker(s) from Tier 2 ZIP Codes, the available pool of local residents whose primary place of residence is within Tier 1 ZIP Codes must first be exhausted.

## **TARGETED WORKER**

A **Targeted Worker** is an individual who is both a County resident and who faces one or more of the following barriers to employment:

1. Has a documented annual income at or below 100 percent of the Federal Poverty Level;
2. Has no high school diploma or GED;
3. Has a history of involvement with the criminal justice system;
4. Is experiencing protracted unemployment (receiving unemployment benefits for at least 6 months);
5. Is a current recipient of government cash or food assistance benefits;
6. Is homeless or has been homeless within the last year;
7. Is a custodial single parent;
8. Is a former foster youth;
9. Is a veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C.421 5[a]);
10. Is an eligible migrant and seasonal farmworker;
11. Is currently an English language learner;

12. Is an older Individual (55+);
13. Is disabled; or
14. Is an individual with a low level of literacy.

## **LOCAL AND TARGETED WORKER PROGRAM REQUIREMENTS**

From time to time, the Local and Targeted Worker Hiring Program may be updated or amended by the Los Angeles County Board of Supervisors and/or Chief Executive Office. Projects are expected to adhere to the Local and Targeted Worker Hiring Program in effect at the time of permitting. Reporting on progress with meeting program requirements will be made monthly and will be a prerequisite to receipt of approval of funds during each construction draw and permanent loan conversion.

The lead developer is required to facilitate the Local and Targeted Worker Hiring Program and must provide evidence of outreach to Local Residents and Targeted Workers and report on hiring activities monthly. The LACDA will condition the approval of construction draws and release of funds at conversion to permanent financing on the submission of monthly reports.

To demonstrate best efforts at achieving the designated hiring goals, the project's lead developer shall provide evidence of outreach efforts that shall include but not be limited to:

- Advertising the project information and Local Resident and Targeted Worker hiring goals, job fairs, and job opportunities via two separate notices in community newspapers prior to the start of construction;
- Conducting outreach to organizations or programs such as:
  - Local Workforce Investment Board and job centers;
  - Area chamber(s) of commerce;
  - Any local community colleges, trade and technical schools, and other employment training programs;
  - Labor organizations if union labor is used; and
  - The local jurisdiction's social services department.
- Conducting at least two job fairs at or near the job site;
- To the extent available, using the lead developer's and general contractor social media outlets and website to advertise the Local and Targeted Worker hiring aspects of the project;
- The following resources may be used to connect contractors to workers meeting the definition of a Local Worker or a Target Worker, should the contractor require assistance. Additional Community Service Providers may be used by contractors and subcontractors to identify local residents and Targeted Workers.
  1. Los Angeles County Workforce Development, Aging, and Community Services: <https://wdacs.lacounty.gov/>
  2. LA Jobs: <https://www.jobsla.org/vosnetIDefault.aspx>
  3. Cal Jobs: <http://www.caliobs.ca.gov/vosnetIDefault.aspx>
  4. Helmets to Hardhats: <https://www.helmetstohardhats.org>
  5. America's Job Center of California: <http://www.americasjobcenter.ca.gov>

As a result of the above outreach, project teams shall develop a list of qualified Local Residents and Targeted Workers and shall draw from this list to the greatest extent possible for job openings that occur throughout the life of the project.

The Local and Targeted Worker Hiring Program does not require the project to hire personnel that are not qualified for available job openings, but instead seeks to provide job opportunities to Local and Targeted Workers to the greatest extent possible.

## 8 Definitions

1. “Area Median Income” or “AMI” means the most recent applicable County median family income published by the California Tax Credit Allocation Committee (TCAC).
2. “Application” means a request for funds that will be used for costs associated with Assisted Units that will house an eligible target population.
3. “Assisted Unit” means a residential housing unit that is subject to the rent, occupancy and other restrictions specified in this NOFA as a result of the financial assistance provided by the LACDA, either in the form of capital or rental subsidy.
4. “At-Risk of Chronic Homelessness” for the NPLH Program means an adult or older adult with a Serious Mental Disorder or Seriously Emotionally Disturbed Children or Adolescents who meet one or more of the criteria below. All persons qualifying under this definition will be prioritized for available housing by using a standardized assessment tool from DMH that ensures that those with the greatest need for Permanent Supportive Housing and the most barriers to housing retention are prioritized for the Assisted Units available to persons At-Risk of Chronic Homelessness pursuant to the terms of the Project regulatory agreement. Persons qualifying under this definition are persons who are at high-risk of long-term or intermittent homelessness, including:
  - a. Pursuant to Welfare and Institutions Code Section 5849.2, persons exiting institutionalized settings, such as jail or prison, hospitals, institutes of mental disease, nursing facilities, or long-term residential substance use disorder treatment, who were Homeless prior to admission to the institutional setting;
  - b. Transition-Age Youth experiencing homelessness or with significant barriers to housing stability, including, but not limited to, one or more evictions or episodes of homelessness, and a history of foster care or involvement with the juvenile justice system; and others as set forth below;
  - c. Persons, including Transition-Age Youth, who prior to entering into one of the facilities or types of institutional care listed herein had a history of being Homeless as defined under this subsection: a state hospital, hospital behavioral health unit, hospital emergency room, institute for mental disease, psychiatric health facility, mental health rehabilitation center, skilled nursing facility, developmental center, residential treatment program, residential care facility, community crisis center, board and care facility, prison, parole, jail or juvenile detention facility, or foster care. Having a history of being Homeless means, at a minimum, one or more episodes of

homelessness in the 12 months prior to entering one of the facilities or types institutional care listed herein. The CES to be used by DMH, or another system used to prioritize persons At-Risk of Chronic Homelessness for available Assisted Units, may impose longer time periods to satisfy the requirement that persons under this paragraph must have a history of being Homeless.

5. The limitations in the subsection pertaining to the definition of “Homeless” below shall not apply to persons At-Risk of Chronic Homelessness for the NPLH Program, meaning that as long as the requirements in subsections 4. a. – c. above are met:
  - a. Persons who have resided in one or more of the settings described above in subsection 4. a. or c. for any length of time may qualify as Homeless upon exit from the facility, regardless of the amount of time spent in such facility; and
  - b. Homeless persons who prior to entry into any of the facilities or types of institutional care listed above have resided in any kind of publicly- or privately-operated temporary housing, including congregate shelters, transitional, interim, or bridge housing, or hotels or motels, may qualify as At-Risk of Chronic Homelessness.
6. “Chronically Homeless” for the NPLH Program means an adult or older adult with a Serious Mental Disorder or Seriously Emotionally Disturbed Children or Adolescents who meet the criteria below according to 24 Code of Federal Regulations Section 578.3, as that section read on May 1, 2016:
  - a. A “homeless individual with a disability,” as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who
    - i. Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
    - ii. Has been Homeless and living as described in paragraph (1) (A) of this definition continuously for at least 12 months, or on at least four separate occasions in the last three years, as long as the combined occasions equal at least 12 months, and each break in homelessness separating the occasions included at least seven consecutive nights of not living as described in paragraph (1). Stays in institutional care facilities for fewer than 90 days will not constitute a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;
  - b. An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
  - c. A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been Homeless.



7. "Coordinated Entry System" or "CES" means a centralized or coordinated process developed pursuant to 24 CFR Section 578.7(a)(8), as that section read on May 1, 2016, designed to coordinate program participant intake, assessment, and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.
8. "Developer" or "Applicant" or "Project Sponsor" means any individual, joint venture, partnership, limited partnership, corporation, cooperative, local public entity, or any combination thereof, certified by the Commission as qualified to own, manage, and rehabilitate a Multifamily Rental Supportive Housing Development. A Developer or Applicant or Project Sponsor may be organized for profit, limited profit or be nonprofit, and includes a limited partnership in which the Developer or Applicant or Project Sponsor or an affiliate of the Developer or Applicant or Project Sponsor is a general partner.
9. "Developmental Disability" means, as defined in section 102 of the [Developmental Disabilities Assistance and Bill of Rights Act](#) of 2000 ([42 U.S.C. 15002](#)):
  - a. A severe, chronic disability of an individual that -
    - i. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
    - ii. Is manifested before the individual attains age 22;
    - iii. Is likely to continue indefinitely;
    - iv. Results in substantial functional limitations in three or more of the following areas of major life activity:
      1. Self-care;
      2. Receptive and expressive language;
      3. Learning;
      4. Mobility;
      5. Self-direction;
      6. Capacity for independent living;
      7. Economic self-sufficiency.
    - v. Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.
  - b. An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (a)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.
10. "Fiscal Integrity", "Financial Feasibility", and/or "Financially Feasible" means, for any Project for any given period of time during the term of the loan, that the total Operating Income for such Project for such period of time, plus funds released pursuant to the

loan agreement from the Project's operating reserve account(s) during such period of time is sufficient to:

- a. Pay all current Operating Expenses for such Project for such period of time;
- b. Pay all current mandatory debt service (excluding deferred interest) coming due with respect to such Project for such period of time;
- c. Fully fund all reserve accounts established pursuant to the NPLH Program Documents for such Project for such period of time; and
- d. Pay other costs permitted by the NPLH Program Documents for such Project for such period of time. The ability to pay any or all of the permitted annual Distributions for a Project shall not be considered in determining Fiscal Integrity of a Project.

11. "HIV/AIDS" means a person with acquired immunodeficiency syndrome or related diseases who is a low-income individual, as defined in this section, and the person's family, per 24 CFR 574.

12. "HUD" means the federal Department of Housing and Urban Development.

13. "Homeless" for the NPLH program means adults or older adults with a Serious Mental Disorder or Seriously Emotionally Disturbed Children or Adolescents who meet the criteria below, according to 24 CFR Section 578.3, as that section read on May 1, 2016, which include, but are not limited to:

- a. An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - i. An individual or family with a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground, or
  - ii. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals), or
  - iii. An individual who is exiting an institution where he or she resided for 90 days or less, and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
- b. An individual or family who will imminently lose their primary nighttime residence provided that:
  - i. The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance,
  - ii. No subsequent residence has been identified, and
  - iii. The individual or family lacks the resources or support networks, such as family, friends, faith-based or other social networks, needed to obtain other permanent housing.

- c. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless, but who:
  - i. Are defined as homeless under Section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), Section 637 of the Head Start Act (42 U.S.C. 9832), Section 41403 of the Violence Against Women Act of 1994 (U.S.C. 14043e-2), Section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), Section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), Section 17(b) of the Child Nutrition Act of 1966 (42 USC 1786 (b)), or Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a),
  - ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60-day period immediately preceding the date of application for homeless assistance,
  - iii. Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance, and
  - iv. Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- d. Any individual or family who:
  - i. Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence,
  - ii. Has no other residence, and
  - iii. Lacks the resources or support networks, such as family, friends, and faith based or other social networks, to obtain other permanent housing.

14. "Housing First" has the same meaning as in Welfare and Institutions Code Section 8255, including all of the core components listed therein.

15. "Multifamily" means a housing type where multiple separate housing units for residential inhabitants are contained within one building or several buildings within one complex, commonly referred to as an "apartment building".

16. "NOFA" means a Notice of Funding Availability.

17. “Permanent Supportive Housing” has the same meaning as “supportive housing,” as defined in Section 50675.14 of the Health and Safety Code, except that “Permanent Supportive Housing” shall include associated facilities if used to provide services to housing residents. Permanent Supportive Housing does not include “Community care facilities” as set forth in Section 1502 of the Health and Safety Code, “Mental health rehabilitation centers” as defined in Section 5675 of the Welfare and Institutions Code, or other residential treatment programs.
18. “Rent” means the same as “gross rent”, as defined in accordance with the Internal Revenue Code (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For Units assisted under the Housing Choice Voucher (HCV) or similar rental or operating subsidy program, Rent includes only the tenant contribution portion of the contract rent.
19. “Rental Housing Development” or “Project” means a multifamily structure or set of structures providing Supportive Housing with common financing, ownership, and management. “Rental Housing Development” does not include any “health facility” as defined by Section 1250 of the Health and Safety Code or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the Health and Safety Code. Rental Housing Developments or Projects also do not include “Community care facilities” as set forth in Section 1502 of the Health and Safety Code, “Mental health rehabilitation centers” as defined in Section 5675 of the Welfare and Institutions Code, or other residential treatment programs.
20. “Scattered Site Housing” means a Rental Housing Development that includes noncontiguous parcels. The requirement of this shall be interpreted in a manner consistent with the requirements of 25 CCR Section 8303 (b) pertaining to Scattered Site Housing. Scattered Site Housing is permitted provided that the following conditions are all satisfied prior to the closing of the loan:
- a. All Project sites in the Rental Housing Development must have a single owner and property manager;
  - b. All Project sites shall be governed by one set of NPLH Program Documents, which among other things, shall include similar tenant selection criteria, serve similar tenant populations and have similar Rent and income restrictions;
  - c. If the Rental Housing Development has a COSR, there shall only be one COSR for all sites in the Project;
  - d. There may be at most one lender with required payments senior to the Commission’s loan;
  - e. There must be a single audit and annual report that covers all Project sites;
  - f. The Sponsor’s obligations under the NPLH Program Documents must be secured by all Project sites, with lien priority relative to local public agency lenders determined in accordance with 25 CCR Section 8315 and use of cash flow available for residual receipts loan payments determined in accordance with 25 CCR Section 8314; and
  - g. The Commission must be named on insurance policies covering all Project sites, with coverage meeting Commission requirements.

21. “SSI/SSP” means the California Department of Social Services’ Supplemental Security Income/State Supplementary Payment pursuant to Welfare and Institutions Code Section 12000 et seq.
22. “Supportive Housing” has the same meaning as in Section 50675.14 of the Health and Safety Code, that is, housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Supportive Housing shall include associated facilities if used to provide services to housing residents. Supportive Housing does not include “health facility” as defined by Section 1250 of the Health and Safety Code or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the Health and Safety Code or “Community care facilities” as set forth in Section 1502 of the Health and Safety Code, “Mental health rehabilitation centers” as defined in Section 5675 of the Welfare and Institutions Code, or other residential treatment programs.
23. “Survivors of Domestic/Human Trafficking” Under this program, a victim of human trafficking is defined as a person who has been subjected to a “severe form of trafficking in persons,” which, as defined in 22 U.S.C. § 7102(11), means
- a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
  - b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
24. “CTCAC” means the California Tax Credit Allocation Committee.
25. “Target Population” for the NPLH Program means members of the target populations identified in Welfare and Institutions Code Section 5600.3 (a) and (b) (adults or older adults with a Serious Mental Disorder or Seriously Emotionally Disturbed Children or Adolescents), who are Homeless, Chronically Homeless, or At-Risk of Chronic Homelessness. This includes persons with co-occurring mental and physical disabilities or co-occurring mental and substance use disorders.
26. “Total Development Cost” means the sum of all eligible development costs associated with the acquisition, design, construction, rehabilitation, or preservation of a project.
27. “Transition-Age Youth” means unaccompanied youth under age 25, including youth with children.
28. “Unit” means a residential unit that is used as a primary residence by its occupants, including individual units within Rental Housing Developments, including Shared Housing.

## **9 SIGNIFICANT CHANGES**

The LACDA's NOFA is modified each year to account for changes in the housing industry, modifications to California Tax Credit Allocation Committee regulations, and/or changes in County or LACDA policies, funding priorities, and goals. While most of these year-to-year changes are minor in nature, some are significant. The following items highlight the significant changes to the NOFA when compared to the last NOFA issuance. Because the information presented below does not include all of the modifications to the NOFA, applicant teams are advised to read and consider the entire document before applying.

### **2.4.2 Appeal of Technical Scoring Results**

Applicants may appeal the Technical Scoring results within the timeframe specified in the Notice of Technical Review Results issued by the LACDA only if project scoring is below the minimum threshold for consideration for a funding award.

### **2.6 CEQA Clearance and Funding**

The LACDA shall either be named as an intended user for environmental reports or will require a reliance letter for environmental reporting that will authorize the LACDA to rely on the existing environmental report in the loan-making process.

### **3.1 Available Funds and Rental Assistance**

Funding and project-based rental assistance is not available to general low-income units.

#### **3.1.3 Available Rental Assistance**

As project-based rental assistance becomes scarcer than in the past, the LACDA may reduce any request of PBVs and/or PBVASH Vouchers based on project need. Applicants may be notified of any such reduction during the application period, or any time before issuance of an Agreement to Enter Into Housing Assistance Payments (AHAP) contract.

#### **4.1.1 Term of Commitment**

The LACDA is currently considering an affordability period that exceeds 55 to 57 years. Projects may be required to adhere to an extended affordability term, which may be introduced after project financing is approved.

#### **4.2.1 Financing Terms**

The LACDA may include in project financing different funding sources or components that will comprise each loan but will consider the sources to be one loan amount. The LACDA will base loan priority decisions on the total sum of the loan.

## **5. Scoring and Evaluation**

Total development cost on a per-unit basis and the project's location in an identified area of displacement have been added to evaluation criteria.

### **7.14 General Contractor Selection and Construction Contracts**

When seeking a General Contractor, applicants must solicit a minimum of three (3) bids for comparison of pricing and services offered. General Contractors working on funded

projects must use a Guaranteed Maximum Price Contract (GMAX) wherein the basis for payment is the cost of the work plus a fee. The construction contract shall include an overall cost limitation acceptable under the LACDA's underwriting criteria. All construction contracts shall clearly state that the sharing of cost savings above and beyond the maximum General Conditions, Overhead and Profit allowed by the LACDA's underwriting criteria are not allowed.

#### **7.16 WITHHOLDING OF FUNDS UNTIL PERMANENT FINANCING**

The LACDA will withhold 1.5% of the loan amount, up to a maximum of \$100,000 (up from \$50,000), until conversion to permanent financing is complete.

#### **UNDERWRITING**

- **Appraisals** – Environmental conditions must be considered in all appraisals. If a site has environmental contamination and this condition was not disclosed to the appraiser for consideration in site valuation, the LACDA will reduce the land value by the cost of any remediation and any related purchase price will be reduced in the project budget.
- **Acquisition and Value** – After initial site acquisition, any subsequent transaction that results in an increase in the value of the land must be arms-length transactions.
- **Commercial Costs** – The cost of tenant improvements for any commercial space in a project shall be excluded from the project budget.
- **Cost of Financing/Loan Interest** – Only loans made by financial institutions (banking institutions) may carry an interest rate for predevelopment or project expenses.

# **SUPPLEMENTAL DOCUMENT 1**

**ELIGIBLE AREAS**



<b>GEOGRAPHY</b>	<b>AFFORDABLE HOUSING TRUST FUNDS</b>	<b>HOME PARTICIPATING JURISDICTIONS</b>	<b>PBV/PBVASH*</b>
Unincorporated Areas	X	X	X
Agoura Hills	X	X	X
Alhambra	X		X
Arcadia	X	X	X
Artesia	X		X
Avalon	X	X	X
Azusa	X	X	X
Baldwin Park	X		
Bell	X	X	X
Bellflower	X		X
Bell Gardens	X	X	X
Beverly Hills	X	X	X
Bradbury	X		
Burbank	X		
Calabasas	X	X	X
Carson	X		X
Cerritos	X	X	X
Claremont	X	X	X
Commerce	X	X	X
Compton	X		
Covina	X	X	X
Cudahy	X	X	X
Culver City	X	X	
Diamond Bar	X	X	X
Downey	X		X
Duarte	X	X	X
El Monte	X		X
El Segundo	X	X	X
Gardena	X		X
Glendale	X		
Glendora	X		X
Hawaiian Gardens	X	X	
Hawthorne	X		
Hermosa Beach	X	X	X
Hidden Hills	X	X	
Huntington Park	X		X
Industry	X		
Inglewood	X		
Irwindale	X	X	X
La Canada Flintridge	X	X	X
La Habra Heights	X	X	X
La Mirada	X	X	X
La Puente	X	X	X
La Verne	X	X	X

CITY	AFFORDABLE HOUSING TRUST FUNDS	HOME PARTICIPATING JURISDICTIONS	PBV/PBVASH
Lakewood	X		X
Lancaster	X		X
Lawndale	X	X	X
Lomita	X	X	X
Long Beach	X		
Los Angeles	X		
Lynwood	X		X
Malibu	X	X	X
Manhattan Beach	X	X	X
Maywood	X	X	X
Monrovia	X	X	
Montebello	X		X
Monterey Park	X		X
Norwalk	X		
Palmdale	X		X
Palos Verdes Estates	X		
Paramount	X		X
Pasadena	X		
Pico Rivera	X		
Pomona	X		
Rancho Palos Verdes	X	X	X
Redondo Beach	X		
Rolling Hills	X		X
Rolling Hills Estates	X	X	X
Rosemead	X		X
San Dimas	X	X	X
San Fernando	X	X	X
San Gabriel	X	X	X
San Marino	X	X	X
Santa Clarita	X		X
Santa Fe Springs	X	X	X
Santa Monica	X		
Sierra Madre	X	X	X
Signal Hill	X	X	X
South El Monte	X	X	
South Gate	X		
South Pasadena	X	X	X
Temple City	X	X	X
Torrance	X	X	
Vernon	X		
Walnut	X	X	X
West Covina	X		X
West Hollywood	X	X	X
Westlake Village	X	X	X
Whittier	X		X

\*Complete listing of all cities/unincorporated areas is on page 3.

# LOS ANGELES COUNTY DEVELOPMENT AUTHORITY

## AREAS SERVED

The Los Angeles County Development Authority (LACDA) serves the unincorporated areas of Los Angeles County (areas that are not part of a city) and 62 incorporated cities. Renters with a Section 8 Housing Choice Voucher may look for housing within the eligible areas below. Please note: **Veterans Affairs Supportive Housing (VASH)** vouchers may also be used in the Cities of Los Angeles, Pasadena, Inglewood, Baldwin Park, Norwalk, Burbank, Redondo Beach, Long Beach and Kern County jurisdictions.

<b>REGION</b> (Cities/Unincorporated Areas)
<b>CENTRAL REGION</b>
Alhambra
Arcadia
Arcadia (UI)
Artesia
Athens (UI)
Azusa
Azusa (UI)
Baldwin Hills (UI)
Bassett (UI)
Bell
Bell Gardens
Bellflower
Carson
Carson (UI)
Cerritos
Charter Oak (UI)
City of Commerce
City Terrace (UI)
Claremont
Claremont (UI)
Compton (UI)
Covina
Cudahy
Diamond Bar
Downey
Duarte
East Los Angeles (UI)
El Monte
Florence (UI)
Gardena
Glendora
Glendora (UI)
Hacienda Heights (UI)
Hawthorne (UI)
Huntington Park
Irwindale
La Habra Heights
La Mirada
La Puente
La Verne
La Verne (UI)
Ladera Heights (UI)
Lakewood
Lawndale
Lawndale (UI)
Lennox (UI)
Lynwood
Los Angeles (UI)
Maywood
Montebello
Monterey Park
Paramount

<b>REGION</b> (Cities/Unincorporated Areas)
Rancho Dominguez (UI)
Rosemead
Rowland Heights (UI)
San Dimas
San Gabriel
San Gabriel (UI)
Santa Fe Springs
Sierra Madre
Temple City
Torrance (UI)
Valinda (UI)
Walnut
West Covina
West Covina (UI)
Whittier
Whittier (UI)
Willowbrook (UI)
Windsor Hills/View Park (UI)
<b>COASTAL REGION</b>
Agoura Hills
Agoura (UI)
Avalon (Catalina Island)
Catalina Island (UI)
Cornell (UI)
El Nido (UI)
El Segundo
Hermosa Beach
Lomita
Los Angeles (UI)
Malibu
Malibu Bowl (Malibu)
Malibu Lake (UI)
Manhattan Beach
El Porto (Manhattan Beach)
Marina Del Rey (UI)
Miraleste (UI)
Rancho Palos Verdes
Rolling Hills
Rolling Hills (UI)
Rolling Hills Estates
Signal Hill
Topanga (UI)
<b>VALLEY REGION</b>
Altadena (UI)
Beverly Hills
Bouquet Canyon (UI)
Calabasas
Calabasas Park (Calabasas)
Calabasas Highlands (UI)
Castaic (UI)
Fernwood (UI)
Forest Park (UI)
Glenview (UI)

<b>REGION</b> (Cities/Unincorporated Areas)
La Canada Flintridge
La Crescenta (UI)
Lang (UI)
Los Angeles (UI)
Mint Canyon (UI)
Monte Nido (UI)
Montrose (UI)
San Fernando
San Marino
Santa Clarita
Canyon Country (Santa Clarita)
Newhall (Santa Clarita)
Saugus (Santa Clarita)
Stevenson Ranch (Santa Clarita)
Valencia (Santa Clarita)
South Pasadena
Sulphur Springs (UI)
Universal City (UI)
Val Verde (UI)
West Hollywood
Westlake Village
<b>NORTH COUNTY REGION</b>
Acton (UI)
Ague Dulce (UI)
Antelope Acres (UI)
Elizabeth Lake (UI)
Green Valley (UI)
Lake Hughes (UI)
Lake Los Angeles (UI)
Lancaster
Leona Valley (UI)
Little Rock (UI)
Llano (UI)
Los Angeles (UI)
Palmdale
Palmdale (UI)
Pearblossom (UI)
Pinetree (UI)
Quartz Hill (UI)
Soledad (UI)
Valyermo (UI)
Vasquez Rocks (UI)
Wilsona Gardens (UI)

AH-Areas Served (Revised 05-20-2019)

\*Owners with available units in the Cities of Los Angeles, Pasadena, Inglewood, Baldwin Park, Norwalk, Burbank, Redondo Beach, Long Beach, Kern County, and LACDA's regular jurisdictions may also participate in the Homeless Incentive Program (HIP).

# **SUPPLEMENTAL DOCUMENT 2**

**PROJECT-BASED VOUCHERS AND PROJECT-BASED  
VETERANS AFFAIRS SUPPORTIVE HOUSING (PBV/PBVASH)  
REGULATIONS AND GUIDELINES**

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### **Attachment A**

- i. Form HUD-2880

### **Attachment B**

- i. Project-Based Voucher Program Definitions
- ii. HUD Notices on PBV/PBVASH
- iii. Administrative Plan, Chapter 21: Project-Based Vouchers
- iv. CFR Part 983 Project-Based Vouchers Final Ruling
- v. Federal Register Documents on PBV/PBVASH  
Administrative Guidelines; Subsidy Layering Reviews for Section  
8 Project-Based Voucher Housing Assistance Payments  
Contracts and Mixed-Finance Development

**Project-Based Voucher and Project-Based Veterans Affairs Supportive Housing  
(PBV/PBVASH)  
Regulations and Guidelines**

**I. GENERAL**

Applicants requesting funding for housing units under the Notice of Funding Availability (NOFA) issued by the Los Angeles County Development Authority (LACDA), with projects located within the jurisdiction of the LACDA, are invited to apply to participate in the Project-Based Voucher and Project Based Veterans Affairs Supportive Housing (PBV/PBVASH) program. Project-Based Vouchers are administered by the LACDA's Housing Assistance Division. The LACDA's goals are to attract affordable developments in its jurisdiction, increase affordability of housing for families making at or below 30% of the area median income, increase the number of affordable housing developments that serve homeless veterans and their families, and further the U.S. Department of Housing and Urban Development's (HUD) and the LACDA's goals of deconcentration of poverty.

This section addresses only those aspects of the PBV/PBVASH program. To understand how the PBV/PBVASH program will function with regard to relocation, applications, waiting list, leasing, maintenance, rent adjustments, and other aspects of property management, applicants must review the federal regulations and Housing Assistance Division policies contained in Attachment B of this section. A list of helpful definitions is also included in Attachment B.

The LACDA reserves the right to determine the number of vouchers to be awarded to any project and to determine start dates of any PBV/PBVASH contracts awarded. The determination of start dates will be affected by the availability of vouchers, which cannot be predicted at this time.

See NOFA Supplemental Document - Eligible Areas for geographic restrictions related to PBV/PBVASH eligibility. Applications for rental assistance may only either be in predevelopment or already completed (but not in construction).

Effective May 16, 2019, the Housing Authority of the County of Los Angeles was dissolved as a separate legal entity and merged with the Community Development Commission. As a result of the merger, the Commission has taken title to the Housing Authority's property, debts, demands, liabilities, and obligations. At this time, the unified agency is known as the Los Angeles County Development Authority (LACDA) and the selected applicants for PBV/PBVASH will be expected to execute contracts with the LACDA.

**II. GOVERNING REGULATIONS**

The PBV program is authorized by Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)). The VASH program is authorized by section 8(o)(19) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(19)). The PBV program is regulated by Title of

the Code of Federal Regulations Part 983 (24 CFR Part 983), with additional rules as published in the Federal Register (Vol. 79, No. 122, 06/25/2014, Vol. 82, No. 11, 01/18/2017 & Vol. 82, No. 134, 07/14/2017), which is included as part of Attachment B to this section. The VASH program is regulated by Title 24 of the Code of Federal Regulations Part 982 (24 CFR Part 982), with additional special rules as published in the Federal Register (Vol. 73, No. 88, 05/06/2008). HUD's notices (PIH 2017-21, PIH 2011-50 & PIH 2009-11) regarding Project-Basing vouchers are included as part of Attachment B to this section. The LACDA's PBV program is governed by the Housing Assistance Division's Administrative Plan, especially, but not limited to Chapter 21, "Project-Based Vouchers." This chapter is included as part of Attachment B to this section.

The PBV/PBVASH requirements cited above shall prevail in the event of any conflict with the NOFA. In addition, if any portion of this NOFA or the Administrative Plan is in conflict with the provisions of 24 CFR Part 983 or Part 982, the provisions of the CFR shall prevail.

All applicants for PBV/PBVASH vouchers must be familiar with the above regulations. All applicants must at all times meet the federal and the LACDA's requirements of the PBV/PBVASH program.

#### **A. Other Federal Requirements**

Applicants must be familiar with other federal requirements and provisions applying to the PBV/PBVASH program that are referenced at 24 CFR Part 983.4 and 24 CFR Part 982.

#### **B. Description of the PBV/PBVASH Program**

The PBV/PBVASH program is administered by the LACDA's Housing Assistance Division. The PBV/PBVASH program is funded through the LACDA's HUD allocation of PBV/PBVASH vouchers, subject to approval by HUD, which will be sought through a process separate from this NOFA.

New construction or rehabilitated housing is developed under an Agreement to Enter into Housing Assistance Payments Contract (AHAP contract), executed by the owner and the LACDA. In the AHAP contract, the LACDA agrees to execute a Housing Assistance Payment Contract (HAP contract) after the owner completes the construction or rehabilitation of the units in a manner consistent with the agreement and Housing Quality Standards (HQS).

Existing Buildings requesting PBV/PBVASH without construction or rehabilitation are subject to passing the LACDA's Housing Quality Standards (HQS) prior to commitment of the vouchers and entering into a HAP Contract.

During the term of the HAP contract, the LACDA will make housing assistance payments to the owner for units leased and occupied by eligible families.

All units utilizing PBV/PBVASH must be specifically identified and remain designated PBV/PBVASH units for the life of the contract.

All projects utilizing PBV/PBVASH are subject to a National Environmental Policy Act (NEPA) environmental review prior to execution of the AHAP Contract.

### **III. TERMS AND REQUIREMENTS**

#### **A. Maximum Amount of PBV/PBVASH Assistance**

Up to a total of 600 PBVs/PBVASH Vouchers are available to projects only within LACDA's jurisdiction. Projects must apply for and be awarded LACDA capital funds to qualify for rental assistance, with one exception, noted below.

The following types of rental assistance are only available to projects that also receive a capital award:

- A combined total of up to 400 PBVs and PBVASH Vouchers, allocated to meet demand. These vouchers are only available for Special Needs and/or NPLH units funded by the LACDA.
- Up to 100 PBVs available for eligible affordable housing preservation projects.

The following rental assistance may be available for projects without a capital award:

- Up to 100 PBVASH Vouchers.

If not fully utilized in the stated set-asides, the LACDA may reallocate PBVs/PBVASH Vouchers, as needed to meet demand. PBVASH Vouchers may be awarded to projects without a capital award based on availability, as projects requesting a combined award of capital and rental assistance will be prioritized.

#### **B. Eligible Uses**

Monthly PBV/PBVASH rental assistance payments may be used for the same lawful purpose as rent, upon execution of a HAP contract.

#### **C. Release of Funds**

PBV/PBVASH rental assistance payments are issued monthly on behalf of qualifying tenants in qualifying units under the terms of a HAP contract entered into by the owner and the LACDA only after: (1) project selection, (2) California Tax Credit Allocation Committee (TCAC) review and approval of a Subsidy Layering Review (SLR) (not applicable for non-tax credit applications), (3) execution of an AHAP contract, (4) completion of construction, and (5) compliance with Housing Quality Standards. TCAC will not commence the SLR until all funding sources are committed, but the required SLR documents may be submitted in conjunction with the Low-Income Housing Tax Credit application to expedite the process (See TCAC memo attached to this section).



#### **D. Term of Commitment**

The LACDA may enter into a PBV/PBVASH HAP contract with an owner for an initial term of not less than one year and not more than 20 years. The LACDA will consider requests for an extension of the initial contract term no earlier than 2 years prior to expiration at its sole discretion.

#### **E. Affirmative Marketing**

All projects receiving funding under this NOFA must adhere to the LACDA's Affirmative Marketing Requirements. Applicants should note that the Affirmative Marketing requirements may vary for each project. The LACDA's Affirmative Marketing Requirements are listed in the Fair Housing and Accessibility Requirements under the NOFA's Supplemental Documents.

#### **F. Section 3 Compliance**

All projects receiving an award of PBV/PBVASH vouchers and/or HOME funds must comply with HUD's Section 3 requirements. The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by financial assistance from HUD shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons.

The written strategy must demonstrate an understanding of the Section 3 requirements and detail how the Applicant will ensure that, when employment or contracting opportunities are generated because the project or activity necessitates the employment of additional persons or the award of contracts for work, preference shall be given to low- and very low-income persons or business concerns in the neighborhood. Neighborhood is defined in the HOME regulations (24 CFR Part 92, Subpart A) as "a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government."

Recipients of an allocation of PBV/PBVASH will be required to complete Section 3 compliance forms prior to execution of an AHAP contract.

#### **G. Rents**

Applicants for PBV/PBVASH must comply with the restrictions in rent calculation contained in 24 CFR Part 982.507. The LACDA shall determine reasonable rents in accordance with federal regulations at the time of the HAP contract approval. The LACDA's Payment Standards can be found on the [Section 8](#) webpage, as well as the NOFA's Supplemental Documents. These Payment Standards must be used to calculate the monthly housing assistance payment for all units, regardless of income levels, for proforma purposes only. Final approved net rents will be determined by factoring in the utility allowance for any utilities for which the tenant is responsible.

## **H. Utility Allowance**

Projects in unincorporated areas or in participating cities must use the Utility Allowance Schedule posted on the LACDA's [Public Documents](#) webpage. Applicants proposing to request vouchers should note that current HUD regulation do not permit the use of the California Utility Allowance Calculator (CUAC) for units using PBV/PBVASH. To be eligible for the All Electric schedule, projects must have no gas-powered services (such as a centrally-located communal hot water heater or solar system with a gas-powered back-up).

## **I. Supportive Services and Budget**

All rental assistance applications must provide a services plan and budget that is responsive to the requirements of the Administrative Plan, Chapter 21, "Project-Based Vouchers" included as Attachment B to this section and submit the required services-related sections delineated in the relevant sections of the Application for Rental Assistance. For Preservation projects that do not currently have a supportive services proponent, please explain how tenants will be linked with needed services.

## **J. Davis-Bacon Federal Wages**

The Davis-Bacon Act (40 U.S.C. 276a) requires payment of prevailing wage for all projects with nine (9) or more PBV/PBVASH units.

## **K. Service Coordination/Case Management Costs**

The cost of the Resident Services Coordinator and Case Management may be paid from cash flow. Consideration is given to the client load and the expectations delineated in the service plan. The cost of service provision, however, may not be funded from cash flow or from capital financing sources.

## **L. Coordinated Entry System**

Recipients of PBVASH vouchers must use a Coordinated Entry System (CES) for leasing 100 percent of PBVASH units. Recipients of PBVs that serve homeless populations must use a CES for leasing at least 80 percent of PBV units.

# **IV. EVALUATION PRIORITIES AND SCORING CRITERIA**

All applications must provide an appropriate level of supportive services to qualify for PBV/PBVASH vouchers, based on the LACDA's current priorities and goals for the PBV/PBVASH program and in accordance with the requirements identified in the NOFA Application for Funding. Therefore, even if an application meets the minimum PBV/PBVASH scoring criteria identified below, but fails to score well enough to achieve a capital allocation from the LACDA, a PBV/PBVASH allocation will not be awarded.

## **A. Threshold Requirement: PBVASH Letter of Support**

In addition to complying with all the NOFA Application for Funding requirements, applicants for PBVASH vouchers must include a letter of support from the Department of Veterans Affairs. **This is a threshold item for PBVASH; applications that do not include a letter of support will not be considered.** Applicants may contact Evangelina

Ligons at [Evangelina.Ligons@va.gov](mailto:Evangelina.Ligons@va.gov), or (310) 478-3711 x41795 at the Department of Veterans Affairs.

## B. Scoring Criteria

As points for PBV/PBVASH are not factored into the overall NOFA score as defined in the NOFA Scoring Criteria, the Technical Scoring of the Application for Rental Assistance will be conducted separately. Only applications meeting the minimum score criteria of 200 points will be recommended for a voucher allocation to accompany the capital award. The purpose of the additional scoring criteria is to ensure compatibility with HUD's priorities for the use of these vouchers. In addition, omissions and inconsistencies of any kind will be subject to the assessment of negative points. The scoring and evaluation of Applications for Rental Assistance will be subject to the following:

Scoring Criteria	Max Points
Deconcentration	100
Readiness for Occupancy	200
Accessibility to the West Los Angeles Veteran Affairs Medical Center (PBVASH only)	50
Vouchers Dedicated to Units for Homeless (PBV only)	50
<b>TOTAL</b>	<b>350</b>

## C. Deconcentration

"Deconcentration" is an important federal housing policy to expand housing and economic opportunities. Projects are encouraged to locate in census tracts with a poverty rate of 20% or less based on the most current American Community Survey (ACS) data.

Deconcentration	Points	Max Points
Census tract with a poverty rate of 20% or less based on the ACS data	100	100
Census tract with a poverty rate of 20% or higher based on the ACS data	0	

## D. Readiness for Occupancy

Readiness for Occupancy	Points	Max Points
Ready for occupancy by January 1, 2024	200	200
Ready for occupancy by July 1, 2024	150	
Ready for occupancy after July 1, 2024	75	

**E. Accessibility to the West Los Angeles Veteran Affairs Medical Center (PBVASH Only)**

Accessibility	Points	Max Points
Accessible by public transportation via direct line with one half mile or less total walking distance	50	50
Accessible by public transportation with one transfer and one mile or less total walking distance	25	

**F. Vouchers Dedicated Exclusively to Units Set Aside for Households Who Are Homeless (PBV only)**

PBVs for Homeless	Points	Max Points
Application requests PBVs that will be used only for units occupied by homeless households	50	50
Application requests less than 100% of PBVs for units occupied by homeless households	0	

**G. Tie-Breaker**

If more than one application receives the same score, priority shall be given to the project with the highest overall score for the NOFA Application for Funding, or the application selected for funding based on criteria established by the LACDA.

**V. RESCISSION OF VOUCHERS**

If the award of vouchers to a successful applicant is based on capital funding or tax credits being awarded, offered, or guaranteed on the basis of participation in this NOFA, or by other provisions of this NOFA that require specific performance of the successful applicant, and the applicant is later disqualified, defaults upon, or otherwise fails to comply with the requirements stipulated by this NOFA or by any contract, loan or other award or disbursement made as a result of this NOFA, such disqualification, default or noncompliance shall be sufficient grounds for denial or termination of any LACDA award of PBV/PBVASH voucher assistance. Performance criteria may include, but not be limited to, having an approved Supportive Services Plan, or meeting architectural design, zoning, or other requirements. The LACDA shall, at its sole discretion, determine whether the offer or award of project-based assistance should be withdrawn or terminated.

**VI. APPLICATION FOR RENTAL ASSISTANCE INSTRUCTIONS**

Applicants must submit the entire Application for Rental Assistance document as one Excel file with the NOFA Application for Funding. Do not create and save a PDF, or save individual workbook tabs. The application must match each category and sub-category specified in the Application for Rental Assistance – Application Checklist. Applicants must

clearly explain why any item requested is not applicable to the project or unavailable in the appropriate section of the application.

To be considered for PBV/PBVASH, applicants must:

1. Submit a NOFA Application for Funding
  - Comply with all NOFA requirements
2. Submit an Application for Rental Assistance
  - Review and comply with Governing Regulations
  - Adhere to Application Instructions

## **A. Section-by-Section Instructions**

### **Section A. Project Summary**

Complete the questionnaire, including:

1. Complete address of each building;
2. Total number of units in the project;
3. Construction completion date;
4. Number and type of units to receive assistance;
5. Number of units set aside for individuals with mobility impairment (minimum 10% of total units) and the number set aside for individuals with sight or hearing impairments (minimum 4% of total units). Indicate the percentage of total units and accessibility features for each type of unit set aside, and the unit numbers; and
6. Type of “qualifying family” receiving assistance (see below)

### **Percentage of PBV/PBVASH Units per Project (See 24 CFR Part 983.56)**

HUD limits the number of PBV/PBVASH units in a project to no more than the greater of 25 units or 25% of the number of dwelling units in the project, defined as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

HUD permits an exception to 25% per project cap when PBV/PBVASH units in a project are reserved for “qualifying families,” which means:

- a) Elderly (62 years and over);
- b) Families eligible to receive qualified supportive services.

The LACDA anticipates that applicants may seek exceptions to the 25% per project cap. The NOFA Application for Funding section regarding the delivery of supportive services must describe outreach for qualifying applicants, qualifying supportive services for qualifying families, monitoring, performance indicators and tracking, and procedures for termination of families non-compliant with service plans. Note that at least one member of each household must be eligible to receive at least one qualifying supportive service. Also note that neither the LACDA nor the owner may require participation in medical or disability-related services other than drug and alcohol treatment in the case of residents with current substance use disorders as a condition of living in an excepted unit, although

such services may be offered. See PIH Notice 2017-21, 24 CFR Part 983.56 (b)(ii)(B) and the Housing Assistance Division's Administrative Plan for the requirements for qualifying supportive services, including rules for families participating in the Family Self Sufficiency (FSS) Program and leasing excepted units made available for occupancy to qualifying families.

### **Section B. Deconcentration**

HUD is interested in promoting deconcentration of poverty by prioritizing projects that are located in a census tract where the poverty rate (per the ACS) is 20% or lower. Indicate whether the project is located in a census tract meeting this criterion.

#### **For Projects Located in a Census Tract with a Poverty Rate Over 20%**

If the project is not located in such a deconcentration area, the applicant must indicate if the census tract in which the project is located meets one of the following criteria:

- Has experienced an overall decline in the poverty level in the last five years (must provide supporting documentation),
- Is a HUD-designated Enterprise Zone, Economic Community or Renewal Community,
- Is undergoing significant revitalization (provide supporting documentation),
- Is likely to experience a decrease in the poverty level due to the development of new market rate units (must provide supporting documentation), or
- Has meaningful educational and economic opportunities (must provide supporting documentation).

Supporting documentation must be attached and deemed acceptable by the LACDA at its sole discretion; mere assertions will not be accepted.

### **Section C. New Construction Projects Only**

#### **For New Construction Projects Located in a Census Tract with High Minority Concentration (Over 71% of Households) (24 CFR 983.57(e)):**

HUD has established certain site and neighborhood standards for New Construction PBV/PBVASH projects. Applicants must ensure that their projects meet the Site and Neighborhood Standards contained at 24 CFR Part 983.57(e).

Review those requirements and answer questions C.1 through C.7, with a "Yes" or "No," to indicate whether the project conforms to the requirements.

#### **Section D. Rehabilitated Housing Site and Neighborhood Standards (24 CFR Part 983.57(d))**

HUD has established certain site and neighborhood standards for PBV/PBVASH projects that include rehabilitation. Applicants must assure that their projects meet the Site and Neighborhood Standards contained at 24 CFR Part 983.57(d).

After reviewing HUD's Site and Neighborhood Standards contained at 24 CFR Part 983.57(d) answer questions D.1 through D.5 with "Yes" or "No" to indicate whether the project conforms to the requirements.

### **Section E.1. Qualifying Resident Population (24 CFR Part 983.56)**

As noted above in the discussion of Section A, HUD limits the number of PBV/PBVASH units in a project to no more than the greater of 25 units or 25% of the total number of units in the project unless PBV/PBVASH units are reserved for "qualifying families," which means:

- a) Elderly (62 years and over);
- b) Families eligible to receive qualified supportive services.

If the application requests PBV/PBVASH for more than the greater of 25 units or 25% of the total number of units in the project, indicate which population or populations will reside in the "excepted" units.

### **Section E.2. Contract Term**

#### **Prior to Contract Execution**

An applicant applying for PBV/PBVASH in conjunction with a proposal for new construction or rehabilitation of units must enter into an AHAP contract with the LACDA within 60 days of the date the entity is notified of successful completion of a Subsidy Layering Review (applicable to projects financed with Low-Income Housing Tax Credits). A single extension of 30 days may be granted at the sole discretion of the LACDA. Failure to enter into an AHAP contract within the specified time period shall be sufficient cause for the LACDA to withdraw the award.

For new construction or rehabilitated housing, a Certificate of Occupancy (new construction) or final permit (rehabilitation) for all units covered by the AHAP contract must be submitted as evidence of housing completion before the HAP contract is executed. The LACDA shall only enter into a HAP contract after receipt of the Certificate of Occupancy and upon the successful conclusion of a physical inspection of each unit by a Housing Assistance Division inspector, who then indicates in writing that each unit fully complies with HUD's Housing Quality Standards (HQS).

Existing Buildings requesting PBV/PBVASH without construction or rehabilitation are subject to passing the LACDA's Housing Quality Standards prior to commitment of the vouchers and entering into a HAP Contract.

#### **Term**

The LACDA may enter into a HAP contract with an owner for an initial term of not less than one year and not more than 20 years for each contract unit.

Indicate the length of the project-based voucher term you are requesting. Additionally, indicate whether you would accept an extension of the contract if it were offered at the conclusion of the initial term.

**Section F. Unit Eligibility (24 CFR Part 983.53)**

24 CFR Part 983.53 prohibits PBV/PBVASH in certain types of housing. Answer “Yes” or “No” to questions F.1 through F.11 to indicate whether your project includes each housing type.

All proposals with new construction or rehabilitation components should be for projects that can realistically be expected to be available for use within two (2) years of construction loan closing.

**Section G. Civil Rights (24 CFR Part 983.57(b)(2))**

Applicants must assure that their projects comply with HUD Civil Rights and disability accommodation requirements referenced at 24 CFR Part 983.57(b)(2). Review those requirements and answer questions G.1 and G.2 with “Yes” or “No,” to indicate whether your project conforms to the requirements.

**Section H. Housing Accessibility for Persons with Disabilities (24 CFR Part 983.102)**

At 24 CFR Part 983.102, HUD lists references to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988. Applicants must review these referenced regulations and assure that their projects meet these requirements. Review the requirements and answer questions H.1 and H.2 with “Yes” or “No” to indicate whether your project conforms to the requirements. Indicate in H.3 the number and percentage of units that will be set-aside for persons with mobility and sensory impairments, and the accessibility features included for each. Any partial percentages must be rounded up to the next whole percentage.

In addition to the HUD requirements, the project must also be in compliance with all other accessibility requirements identified in the NOFA application. Attach copies of the Design Narrative and the Acknowledgement of Accessibility Requirements from the NOFA Application for Funding (Worksheets B.12 and I.5).

**Section I. Financing****Development Timeline**

Attach the Development Timeline from the NOFA Application for Funding, if the project is requesting capital funding along with PBVs. The timeline must include estimated lease-up of 100% of PBV/PBVASH units.

**Development Proforma**

Attach the development proforma from the NOFA Application for Funding, if the project is requesting capital funding along with PBVs.

Proposed projects must demonstrate financial feasibility for both development and operations. Applicants must adhere to TCAC underwriting standards in Section 10327 of the TCAC Regulations and the LACDA’s underwriting requirements found in the NOFA Supplemental Documents. Applications that do not include tax credit financing must adhere to the LACDA’s underwriting requirements. For tax credit projects, applicants are made aware that TCAC will perform the Subsidy Layering Reviews required for



PBV/PBVASH HAP contracts and will be adhering to the HUD Administrative Guidelines for the implementation of the Subsidy Layering Reviews.

The standards for the Subsidy Layering Review are identified in the Federal Register issued on [July 9, 2010](#) and [September 26, 2014](#). Applicants applying for rental assistance will be responsible for reflecting the Safe Harbor Requirements in their development proforma.

The following elements comprise the standards for Subsidy Layering Review:

<b>Development Budget (Safe Harbor)</b>	
General Conditions	6% of construction contract amount
Overhead	2% of construction contract amount
Profit	6% of construction contract amount
Total GC, O&P	14% of the hard construction cost
Developer Fee	12% of the total development cost (which includes profit and overhead)
<b>Operating Budget and Cash Flow</b>	
Rent increases	Trend at 2.5% for the first five years and 5% thereafter
Expenses	Trend at 3% to 7% per year
Debt coverage ratio	Minimum 1.10 to a maximum of 1.45
Cash flow (minus any acceptable reserve amounts)	May not exceed 10% of total expenses

#### Sources and Uses

- The funding sources must indicate whether it is a loan, grant, syndication proceeds, contributed equity, etc.
- Indicate if each funding source is or is not committed at the time of the application.

#### Development Budget

- Be specific, do not use broad categories such as “soft costs.”
- Acquisition costs must distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees.
- Construction and rehabilitation must include builder’s profit and overhead as separate items.
- Prevailing wage (Davis-Bacon) must be included.

#### Operating Budget and Cash Flow

- The Operating Budget and Cash Flow must include projected rental, commercial and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions, and cash flow, as applicable.
- The analysis must be projected over a 20-year period.

### Funding Commitments

- Include commitment letters from all committed sources of funding and disclose significant terms. Loan agreements and grant agreements are sufficient to meet this requirement.
- If a commitment letter for any source of funding is not included or is not available, an explanation of why the item is not included must be inserted in this section.
- All financing commitments must be received by the LACDA in order for the Application for Rental Assistance to be forwarded to TCAC to conduct the Subsidy Layering Review prior to the issuance of an AHAP and/or HAP contract.

### **Section J. Narrative Describing Details of Each Funding Source**

Provide a narrative describing the financing plan for the proposed project as evidenced by Section I. Financing. Include details on sources and uses, including status of other long-term operating subsidy for non-special needs or non-veteran units. For loans, provide details on principal, interest rate, amortization, term, and any accrual, deferral, balloon, or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

### **Section K. Bridge Loan**

If the financing plan includes a bridge loan so that proceeds can be paid upfront when equity contributions are planned over an extended period, appropriate details (i.e., loan documents, etc.) should be provided.

### **Section L. Appraisal Report**

Acquisition and Substantial Rehabilitation projects must include the appraisal report establishing “as is” value of the property prior to construction. The financial implication of tax credits, project-based assistance, or any welfare exemption not existing at the time of the appraisal may not be considered in the appraisal.

### **Section M. Standard Disclosure and Perjury Statement, Identity of Interest Statement**

Include a completed HUD Form 2880 found as Attachment A to this section.

### **Section N. Supportive Services Plan**

Attach a copy of the Supportive Services Narrative and the Property Management Plan in this section.

The Supportive Services Narrative must describe outreach for qualifying applicants, qualifying supportive services for eligible families, monitoring, performance indicators and tracking, and procedures for termination of families non-compliant with service plans. Note that at least one member of each household must be eligible to receive at least one qualifying supportive service. See 24 CFR Part 983.56 (b)(ii)(B) for the requirements for qualifying supportive services, including rules for families participating in the Family Self

Sufficiency (FSS) Program and leasing excepted units made available for occupancy to qualifying families.

**Section O. Section 3 Compliance Strategy Narrative**

Attach the Section 3 Compliance Strategy Narrative from the NOFA Application for Funding.

**Section P. Supplemental Application Certification for PBV/PBVASH**

Only a person legally authorized to sign on behalf of the owner may sign the Application for Rental Assistance.

# **ATTACHMENT A**

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing  
and Urban Development

OMB Approval No. 2501-0032 (exp. 01/31/2020)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received
5. State the name and location (street address, City and State) of the project or activity:	

## Part I Threshold Determinations

- |   |  |
|---|--|
| 1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).<br><input type="checkbox"/> Yes <input type="checkbox"/> No | 2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of \$200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9<br><input type="checkbox"/> Yes <input type="checkbox"/> No. |
|---|--|

If you answered “No” to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. **However**, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

- All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

(Note: Use Additional pages if necessary.)

## Certification

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is voluntary. HUD is authorized to collect this information under the Housing and Community Development Act of 1987 42 U.S.C.3543 (a). The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

**A. Coverage.** You must complete this report if:

- (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of \$200,000 during the fiscal year;
- (2) You are updating a prior report as discussed below; or
- (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

**B. Update reports (filed by "Recipients" of HUD Assistance):**

**General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

#### Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

#### Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to **either** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

#### Part II. Other Government Assistance and Expected Sources and Uses of Funds.

**A. Other Government Assistance.** This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

**B. Non-Government Assistance.** Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD **and any other source** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

### Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

**Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need

not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

#### Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

## **ATTACHMENT B**



## ATTACHMENT B

### Project-Based Voucher Program Definitions

This section defines some PBV terms that are used in this NOFA. See 24 CFR Part 982 and Part 983 for other Voucher program terms.

*1937 Act:* The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Activities of daily living:* Eating, bathing, grooming, dressing, and home management activities.

*ADA:* Americans with Disabilities Act.

*Admission:* The point when the family becomes a participant in the LACDA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the LACDA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

*AHAP:* Agreement to enter into a Housing Assistance Payments contract or "Agreement." The Agreement is a written contract between the LACDA and the owner in a form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under the PBV program (24 CFR part 983). When development is completed by the owner in accordance with the Agreement, the LACDA enters into a HAP contract with the owner.

*Assisted living facility:* A residence facility (including a facility located in a larger multifamily property) that meets all these criteria:

1. The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;
2. The facility makes available supportive services to assist residents in carrying out activities of daily living; and
3. The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

*Census Tract Locator:* Census tracts and their poverty rate can be found at:

<https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx> by typing in the complete address and zip code.

*Comparable rental assistance:* A subsidy or other means to enable a family to obtain decent housing in the LACDA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

*Contract units:* The housing units covered by a HAP contract.

*Development:* Construction or rehabilitation of PBV housing after the proposal selection date.

*Disabled:*

1. A disabled person is one with an inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death or has lasted or can be expected to last continuously for at least 12 months; or for a blind person at least 55 years old, inability because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period.
2. A developmentally disabled person is one with a severe chronic disability that:
  - a. is attributable to a mental and/or physical impairment;
  - b. as manifested before age 22;
  - c. is likely to continue indefinitely;
  - d. results in substantial functional limitations in three or more of the following areas: capacity for independent living, self-care, receptive and expressive language; learning, mobility, self-direction, and economic self-sufficiency AND
  - e. requires special interdisciplinary or generic care treatment, or other services which are of extended or lifelong duration and are individually planned or coordinated.
3. A disabled person is also one who has a physical, emotional or mental impairment that:
  - a. is expected to be of long-continued or indefinite duration;
  - b. substantially impedes the person's ability to live independently;
  - c. is such that the person's ability to live independently could be improved by more suitable housing conditions.

*Efficiency Units:* 0 Bedroom units that have a combination living/sleeping room with a full bath and kitchen.

*Elderly family:* A family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.

*Excepted units:* Units in a multifamily building not counted against the 25 percent/units cap. See §983.56(b)(2)(i).

*Family Self-Sufficiency Program:* The LACDA's Family Self-Sufficiency Program enables families to achieve economic independence and self-sufficiency through assistance with childcare, education, transportation, counseling, job preparation, vocational training and home ownership workshops. Upon becoming employed, FSS participants continue to pay rent in accordance with voucher procedures, but whenever the participant's rent increases, the LACDA makes payments to an interest bearing escrow account in the

family's name. If the family successfully completes the contract obligations within 5 years, the family can apply to graduate from the program and receive the accrued portion of the escrow account.

*HAP Contract:* The Housing Assistance Payments (HAP) contract is an agreement between the owner and LACDA that sets forth both parties' responsibilities and obligations to each other and commits the LACDA to provide PBV subsidy for the approved units during the term of the HAP contract.

*Household:* The family and any LACDA-approved live-in aide.

*Housing assistance payment:* The monthly assistance payment for a PBV unit by the LACDA, which includes:

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and
- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

*Housing quality standards (HQS):* HUD's and the LACDA's housing quality standards for the tenant-based Section 8 Housing Choice Voucher Program (HCVP) and the Project-Based Voucher (PBV) program. See 24 CFR 982.401 for HUD's minimum standards. All HQS requirements for both the HCVP and the PBV programs can be found in the Section 8 Administrative Plan, which can be found on the LACDA's website at:

[www.lacda.org](http://www.lacda.org).

*Lease:* A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the LACDA.

*New Construction:* Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the LACDA and the owner for use under the PBV program.

*Payment standards:* Payment standards are used to calculate the housing assistance payment (HAP) that the public housing authority (PHA) pays to the owner on behalf of the family leasing the unit. Each PHA has latitude in establishing its schedule of payment standard amounts by bedroom size. The range of possible payment standard amounts is based on HUD's published fair market rent (FMR) schedule for the FMR area in which the PHA has jurisdiction. FMR's are based on either the 40th or 50th percentile of rents charged for standard rental housing in the FMR area. A PHA may set its payment standard amounts from 90 percent to 110 percent of the published FMRs, and may set them higher or lower with HUD approval. The PHA must set the payment standard at a level that is high enough to ensure that families are able to afford quality housing while also balancing the need to provide assistance to as many families on the waiting list as possible. The LACDA will review the rent information in the rent reasonableness data

bank and compare it to the payment standards established for the Housing Choice Voucher Program. If the rent reasonableness review indicated that the payment standards are higher than the average rental unit in Los Angeles County, the payment standard for the specific unit size, or all payment standards, will be lowered to reflect the current market rents.

*Partially assisted building:* A building in which there are fewer contract units than residential units.

*Premises:* The building or complex in which the contract unit is located, including common areas and grounds.

*Program:* The voucher program under Section 8 of the 1937 Act, including tenant-based or project-based assistance.

*Project-Based Vouchers/PBV Assistance:* Section 8 tenant-based vouchers (from the LACDA's Housing Choice Voucher Program portfolio) that are committed to a building under a PBV Housing Assistance Payments (HAP) contract for a specific period of time. Unlike the tenant-based voucher program, project-based vouchers are **not** mobile. When the tenant vacates the unit, the unit will continue to receive PBV subsidy, provided the PBV contract has not been terminated or expired.

*Proposal selection date.* The date the LACDA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the Housing Assistance Division's administrative plan.

*Qualifying families:* Those families that qualify a PBV project to exceed the 25 percent or units cap. See §983.56(b)(2)(ii).

*Rehabilitated housing:* Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the LACDA and owner, for use under the PBV program.

*Rent to owner.* The total monthly rent payable by the family and the LACDA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

*Site:* The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

*Special housing type:* Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, cooperative

housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

*Tenant-paid utilities:* Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

*Total tenant payment:* The amount described in 24 CFR 5.628.

*Utility allowance:* See 24 CFR 5.603.

*Utility reimbursement:* See 24 CFR 5.603.

*Waiting List:* The LACDA will use a separate waiting list to administer PBV. All applicants currently on the tenant-based assistance waiting list will be given an opportunity to place their names on the PBV waiting list, with their original date and time intact. New applicants will be given the opportunity to place their names on both the tenant-based waiting list and the PBV waiting list. Owners are expected to make referrals of applicants to this list, to supplement any outreach done by the LACDA.

## **HUD NOTICES ON PBV/PBVASH**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

**SPECIAL ATTENTION OF:**

Public Housing Agencies  
Public Housing Agencies that  
Administer the Housing Choice  
Voucher Program; Owners;  
Other Grantees

**NOTICE PIH 2017–21 (HA)**

Issued: October 30, 2017

This notice remains in effect until amended,  
superseded, or rescinded

**CROSS REFERENCES**

Notice PIH 2009–51

Notice PIH 2011–28

Notice PIH 2011–65 (HA)

Notice PIH 2012–21 (HA)

Notice PIH 2012–32 (HA) H 2017–03, REV-3

Notice PIH 2013–27

Notice PIH 2015–18

Notice PIH 2016–05

**SUPERSEDES**

Notice PIH 2002–22

Notice PIH 2006–16

Notice PIH 2011–54

Notice PIH 2015–05

Notice PIH 2015–10

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**Subject:** Implementation Guidance: Housing Opportunity Through Modernization Act of 2016 (HOTMA) — Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Provisions

**I. Purpose**

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) made changes to both the definition of PHA-owned housing (for project-based and tenant-based vouchers) and the project-based voucher (PBV) program. This notice provides guidance on those changes. The provisions covered by this notice were implemented through a *Federal Register* (FR) notice (82 FR 5458) published on January 18, 2017. HUD then published a follow-up notice at 82 FR 32461 on July, 14, 2017, with technical corrections and clarifications to the January 18, 2017, notice (see Part IV below). The January 18, 2017, notice, as revised by the technical correction notice, is referred to as the “January 18, 2017, implementation notice” throughout this notice.

To consolidate PBV guidance, HUD has incorporated content from previous PBV notices into this notice. See Section V, below, for a list of such notices.

## **II. Background**

On July 29, 2016, HOTMA was signed into law (Public Law 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (“the Act”) (42 U.S.C. 1437f). On January 18, 2017, HUD published a notice (82 FR 5458) to implement various HCV provisions, including a new statutory definition of PHA-owned housing (§105 of HOTMA) and changes to the PBV program (§106 of HOTMA). The provisions went into effect on April 18, 2017. This PIH notice provides further guidance on the implementation of these provisions.

The January 18, 2017, implementation notice also implemented two provisions related to inspections for HCV tenant-based and PBV assistance (§101(a)(1) of HOTMA) (see Notice PIH 2017–20, issued October 27, 2017) and a change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§112 of HOTMA) (guidance will be published separately).

The following HOTMA provisions relating to the PBV program were not implemented by the January 18, 2017, implementation notice and consequently are not covered in this notice:

1. Section 106(a)(4)(iii), authorizing a PHA to enter into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP);
2. Section 106(a)(6), authorizing for the use of an operating cost adjustment factor to adjust PBV contract rents;
3. Section 106(a)(7), authorizing the use of owner-maintained, site-based waiting lists for PBV units; and
4. Section 106(a)(8), concerning the environmental review requirements for existing housing.

## **III. Structure**

This notice is comprised of attachments and appendices. Each attachment follows a uniform structure:

1. Title
2. Regulation
3. HOTMA Reference
4. Applicable Program(s)
5. Summary of Change
6. Content



#### IV. Summary of Technical Corrections

The July, 14, 2017, notice published at 82 FR 32461 (“technical correction notice”) corrected several typographic errors and made the following technical corrections and clarifications to the January 18, 2017, implementation notice. All of the corrections and clarifications are reflected in the respective attachments to this PIH notice and are summarized here in the order in which they appear in this notice solely for the sake of convenience:

1. PHA-Owned Units (Attachment A). The original notice used the phrase “50 percent or more” to define a level of control that constitutes a controlling interest and would thus indicate PHA ownership. The technical correction notice replaces that phrase with “more than 50 percent.”
2. Percentage Limitation (Program Cap) (Attachment C). The original notice stated that new construction units will qualify for replacement housing if they are located on the “site of the original public housing development.” The technical correction notice strikes the phrase “public housing,” making clear that the requirement applies broadly to all covered forms of housing assistance that are excluded from the percentage limitation.
3. Income-Mixing Requirement (Project Cap) (Attachment E).
  - a. *Supportive services.* HOTMA provides that a family can no longer be required to participate in supportive services as a condition of living in a unit in order for that unit to meet the supportive services exception. The technical correction clarifies therefore that a PHA may not rely solely on a supportive services program that requires a family to engage in supportive services, such as the Family Self-Sufficiency (FSS) program, in order for the unit to meet the supportive services exception. Also, the original notice stated that if a family “fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit...and the PHA shall cease paying housing assistance payments.” HUD determined that this provision could be wrongly construed in a way that conflicts with current FSS requirements, which do not allow termination from the housing assistance program for failure to complete the FSS contract.
  - b. *25 percent cap.* The technical correction notice clarifies that the income-mixing cap for projects that are in a census tract with a poverty rate of 20 percent or less is increased from 25 to 40 percent.
  - c. *Definition of new construction.* The technical correction notice makes the definition of new construction units that qualify for an exception to the project cap the same as the definition for new construction that applies to the exception for the PBV percentage limitation.
4. Units Not Subject to Percentage Limitation or Income-Mixing Requirement (Attachment F). The original notice excluded from the list of excepted units those units that received assistance under section 201 of the Housing and

Community Development Amendments of 1978 (Flexible Subsidy program). The technical correction notice clarifies that such units are excepted from both the percentage limitation and the income-mixing requirement.

5. Attaching PBV to Certain PHA-Owned Projects Without Following a Competitive Process (Attachment L). The original notice applied a per-unit cost rehabilitation threshold to all replacement housing, including existing housing. The technical correction notice makes clear that there is no per-unit cost requirement for existing housing owned or controlled by a PHA.

## **V. Notices Superseded by this Notice**

To consolidate PBV guidance, the Department has incorporated content from previous PBV notices into this notice. Specifically, this notice supersedes PIH Notices 2002–22, 2006–16, 2011–54, 2015–05, and 2015–10 in their entirety, as described below:

1. Notice PIH 2002–22 (Units with Low-Income Housing Tax Credit Allocations Combined with Housing Choice Voucher Assistance under the Tenant-Based and Project-Based Programs). This notice is rescinded. The provisions of PIH 2002–22 (which were promulgated before HUD had implemented a PBV regulation) align with current PBV regulations, and are thus no longer necessary in a notice. PBV rents for Low Income Housing Tax Credit (LIHTC) units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.
2. Notice PIH 2006–16 (Project-Based Voucher Units with Low-Income Housing Tax Credit Allocations). This notice is rescinded. The “grandfathering” of PBV projects under PIH 2006–16 is no longer necessary, because PBV rents are no longer capped at the LIHTC rent as they once were. PBV rents for LIHTC units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.
3. Notice PIH 2011–54 (Guidance on the Project-Based Voucher Program):
  - a. “PHA-owned units” is revised by HOTMA, in which a statutory definition of such units was enacted. (Attachment A)
  - b. “Proposal Selection Process” is revised by HOTMA to authorize a PHA to attach PBV assistance to certain PHA-owned projects without following a competitive process. (Attachment L)
  - c. Most remaining portions of Notice PIH 2011–54 are unchanged by HOTMA and are included as an appendix to this notice. Note that additional PBV provisions not covered in PIH 2011–54 are also included as part of Appendix II. (Appendix II)
4. Notice PIH 2015–05 (Project-Based Voucher (PBV) Guidance):
  - a. “Section I – Timely Reporting of the Family Report (form HUD-50058 and form HUD 50058 MTW) into the Inventory Management System/Public Indian Housing Information Center (IMS/PIC) and Timely Submission Into the Voucher Management System (VMS) for

Project Based Vouchers” is adopted with updates to VMS reporting per VMS *User’s Manual* release 8.9.0.0 (April 2016). (Appendix III)

- b. “Section II – Maximum Amount of PBV Assistance (20 Percent Limit) in the PBV Program and PHA Submission requirements under 24 CFR 983.6(d)” is superseded by HOTMA, under which a PHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract authorized units, instead of 20 percent of its voucher budget authority. This notice revises the requirements for PHA notification to HUD of the intent to project-base. (Attachments C and D)
  - c. “Section III – PHA-Owned Units under the PBV Program” is superseded by HOTMA, which revises the definition of PHA-owned units. This notice also covers the role of the independent entity with respect to PHA-owned units. (Attachments A and B)
5. Notice PIH 2015–10 (Project-Basing HUD-Veterans Affairs Supportive Housing (VASH) Vouchers. HOTMA authorizes PHAs to project-base Family Unification Program (FUP) and HUD-Veterans Affairs Supportive Housing (VASH) vouchers without requiring additional HUD approval. Prior to HOTMA, PHAs were prohibited from project-basing vouchers awarded for FUP. HUD-VASH vouchers could be project-based, but required HUD review and approval in accordance with Notice PIH 2015–10 (this applied to HUD-VASH vouchers the PHA chose to project-base and not to HUD-VASH units awarded under a HUD-VASH PBV allocation as described in Attachment F of this notice). This notice supersedes PIH 2015–10 in its entirety.

## **VI. Applicability to Moving to Work (MTW) Agencies**

This notice applies generally to MTW agencies. With respect to any individual MTW agency that is required to submit an Annual MTW Plan to HUD for approval, any specific regulatory provisions addressed in this notice that have been waived as part of the agency’s approved Annual MTW Plan do not apply to that agency.

## **VII. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency 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. The information collection requirements of this notice were assigned OMB Control Number 2577–0169.

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Dominique Blom  
General Deputy Assistant Secretary  
for Public and Indian Housing

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## **Attachments**

## **Attachment A: PHA-Owned Units**

**Regulation:** 24 CFR §983.3, 24 CFR §982.352, and 24 CFR §982.628(d)

**HOTMA Reference:** Sec. 105, which amends Sec. 8(o)(11) of the Act

**Applicable Programs:** HCV (including the Homeownership Option) and PBV

**Summary of Change:** HOTMA defines the term “owned by a PHA,” overriding the definition of PHA-owned units previously established in regulation under 24 CFR §983.3, 24 CFR §982.352, and 24 CFR §982.628(d). This Attachment A and Attachment B supersede Notice PIH 2015–05, Section III, in its entirety.

**Content:** For a unit that is PHA-owned according to the HOTMA definition, a PHA must identify and use an independent entity to perform certain functions. Attachment B of this notice discusses the responsibilities of independent entities for PHA-owned units.

The provisions of this Attachment A apply to the PBV program and to the HCV program (including the Homeownership Option), except where otherwise noted.

(1) Definition of PHA-owned units. In accordance with HOTMA, a unit is “owned by a PHA” if the unit is in a project that is:

- (a) Owned by the PHA (which includes a PHA having a “controlling interest” in the entity that owns the unit);
- (b) Owned by an entity wholly controlled by the PHA; or
- (c) Owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

“Controlling interest” means:

- (a) Holding more than 50 percent of the stock of any corporation; or
- (b) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation); or
- (c) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA; or
- (d) Holding more than 50 percent of all managing member interests in an LLC; or
- (e) Holding more than 50 percent of all general partner interests in a partnership; or
- (f) Having equivalent levels of control in other ownership structures. Most ownership structures are already covered in the categories listed above. This last category is meant to cover any ownership structure not already listed in the categories above. Also, under this category (f), a PHA must have more than 50 percent control in that ownership structure (an equivalent level of control) for the project to be considered PHA-owned.

### PHA-Owned Project: Example

PHA A holds more than 50 percent of the stock in ABC Projects, and ABC Projects is a corporation that owns the project to which PBV assistance will be attached. In this case, the project is considered PHA-owned.

- (2) Units not PHA-owned. The previous definition of PHA-owned (as established in regulation) was more expansive than the HOTMA definition. Under the previous definition, if a PHA held any interest (direct or indirect) in a project, then the project was considered to be PHA-owned. The following list offers examples of scenarios under which a unit is not considered to be PHA-owned under the HOTMA definition:
- (a) The PHA holds a fee interest as ground lessor of the property on which the building is situated, but no ownership interest in the building or unit itself.
  - (b) The PHA holds only a security interest under a mortgage or deed of trust on the unit; or
  - (c) The PHA has only a non-controlling interest in an entity that owns the unit or in the managing member or general partner of an entity that owns the unit. Following the example above, assume PHA A holds only 45 percent of ABC Project's stocks, which is below the threshold that constitutes a controlling interest in the corporation that owns the project. In this case, the project is not considered to be PHA-owned.

As it relates to the PBV program, the new section 8(o)(13)(N) of the Act allows a PHA to attach PBVs to a project in which the PHA has an ownership interest or over which the PHA has control, without following a competitive process, but only in cases in which the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. In this context, the PHA's ownership interest does not have to meet the definition of the term "owned by a PHA" established by section 105 of HOTMA. Information on what constitutes an ownership interest or control for purposes of section 8(o)(13)(N) is found in Attachment L of this notice.

- (3) Classifying a unit as not PHA-owned. The new definition of PHA-owned is in effect as of April 18, 2017, and applies to all PBV projects. An opinion from the PHA's legal counsel that a unit is not PHA-owned is required under the following two scenarios:
- (a) The change in definition results in a project that was PHA-owned under the previous definition and was under HAP or AHAP before April 18, 2017, to no longer be PHA-owned.
  - (b) A change in ownership structure results in a project no longer meeting the definition of PHA-owned in effect as of April 18, 2017.

The project remains classified as PHA-owned for purposes of program requirements and monitoring until the PHA obtains an opinion from its legal counsel that the project is no longer PHA-owned for a project that fits into one of the above two categories. Except for the two instances described above, a PHA is not required to obtain a legal opinion when determining if a unit is PHA-owned. Once the legal opinion has been



obtained, the PHA is no longer required to use an independent entity to perform the applicable responsibilities (as described in Attachment B) concerning the project. The PHA must keep the legal opinion in its files for the length of the PBV HAP contract, the HCV HAP contract, or Homeownership assistance, as applicable.

- (4) Classifying a PBV project as PHA-owned due to a change in ownership. If an ownership structure changes in a manner that would cause a project to become classified as PHA-owned (e.g., the PHA ownership interest is increased to an amount greater than 50 percent), then the PHA must identify to the local HUD Field Office of Public Housing, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform the applicable independent entity responsibilities. See Attachment B of this notice for more information on independent entities.
- (5) Contract requirements for PHA-owned units. Because the HAP contract administrator and the owner cannot be the same legal entity (i.e., the PHA acting as contract administrator cannot execute a contract with itself as the owner of the PBV or HCV units), the PHA must establish a separate legal entity to serve as the owner. Such entity may be one of the following:
  - (a) A non-profit affiliate or instrumentality of the PHA;
  - (b) A limited liability corporation;
  - (c) A limited partnership;
  - (d) A corporation; or
  - (e) Any other legally acceptable entity recognized under State law.

Such an entity would serve as the owner only for purposes of execution of the HAP contract. In cases where the independent entity is required to notify the PHA, the notification requirement is satisfied by notifying the PHA itself. The entity that is serving as the owner for purposes of contract execution does not need to be notified as well.

- (6) Rental Assistance Demonstration (RAD). As it pertains to conversions to the PBV program under RAD, the definition of control/ownership provided under the RAD notice (PIH-2012-32 (HA) H-2017-03, REV-3 or successor) is used specifically to determine whether a PHA retains sufficient control over a project for purposes of HUD's requirement for ownership or control of the Covered Project by a public or non-profit entity for RAD conversions.

For purposes of determining whether the PHA will be required to use an independent entity to perform certain functions concerning the project, the provisions of this notice apply to RAD PBV conversions. This means that, under certain circumstances (such as when the PHA holds only a fee interest as ground lessor in the property in which the unit is situated), a project may meet the RAD definition of ownership or control, but may not be considered to be PHA-owned under this notice. In such a circumstance, the PHA would not be required to use an independent entity.

## **Attachment B: PHA-Owned Units and Independent Entities**

**Regulation:** 24 CFR §983.59, 24 CFR §982.352, and 24 CFR §982.628(d)

**HOTMA Reference:** Not applicable

**Applicable Programs:** HCV (including the Homeownership Option) and PBV

**Summary of Change:** HUD is changing the existing policy for independent entity review and approval by superseding the requirements established under Section III of Notice PIH 2015–05. Notice PIH 2015–05 required a PHA to submit documentation that demonstrated or supported the independent nature of the parties’ relationship. With the publication of this notice, PHAs must, instead, submit a joint certification as explained in paragraph 3, HUD independent entity approval, below.

The requirement to submit a joint certification is a change to HUD policy as laid out in the aforementioned PIH notice; it is not a change resulting from the enactment of HOTMA. HUD expects that this change will ease PHA administrative burden because PHAs will no longer need to produce documentation (such as financial statements, legal documents showing the structure of each organization, etc.) showing the independent nature of the parties. While HUD retains the right to request more information, HUD expects that this will be unnecessary in the majority of cases. This attachment also provides some examples of independent entities and includes tables that provide a visual representation of independent entity functions.

**Content:** If a unit is considered PHA owned (based on the definition of PHA-owned unit, as explained in Attachment A of this notice), then Section 8(o)(11) of the Act requires that the unit of general local government or a HUD-approved independent entity perform certain functions for such units. If the PHA itself is the unit of general local government or an agency of such government, then the next level of general local government may perform such functions without HUD approval. For example, if the PHA itself is the city or an agency of the city, then the county or state government may perform the functions without HUD approval.

In cases where there is no next level of general local government (e.g., the PHA is an agency of the state) or the PHA opts not to have independent-entity functions performed by the next level of general local government, then the PHA must retain the services of an independent, HUD-approved public or private entity.

For purposes of this attachment, the term “independent entity” refers to either the unit of general local government or the HUD-approved independent entity, as applicable. The provisions of this attachment apply to the HCV program (including the Homeownership Option) and the PBV program, except where otherwise noted.

PHAs are encouraged to maintain all documentation related to independent entity functions and approvals in the project file for the duration of the HAP contract.

- (1) Relationship between the PHA and the independent entity. As stated in previous HUD guidance, the independent entity and PHA must be autonomous. That is, the parties must not be connected legally, financially (except with regard to compensation for services performed for PHA-owned units), or in any other manner that could cause either party to be improperly influenced by the other. For example, the independent entity must not include individuals who have a relationship with the PHA or the project that would interfere with the entity’s exercise of independent judgment in

carrying out responsibilities as they relate to the PHA-owned units.

Further, the independent entity must have the ability to perform its responsibilities in an unbiased manner, and the PHA must not take any action that could prevent the independent entity from making unbiased determinations related to its responsibilities. Examples of independent entities include, but are not limited to: PHA vendors, real estate agencies, non-profit social services agencies with affordable housing experience, and law firms specializing in affordable housing law (for example, to perform the review of the PBV selection process).

- (2) **Independent entity functions.** The independent entity is responsible for performing certain functions for PHA-owned units. The table below provides an overview of each function to be performed by the independent entity, and its regulatory basis, under the PBV program and the HCV program (including the Homeownership Option). Any additional information on a particular function is discussed following the overview table.

**Table 1: Overview of Independent Entity Functions**

<b>Function</b>	<b>Applicable Program: Regulatory Basis</b>
Review the PHA's PBV selection process.	PBV: 24 CFR §983.51(e)
Establish PBV contract rents (initial rent to owner and redetermined rent to owner).	PBV: 24 CFR §983.59(b)(1) PBV: 24 CFR §983.301(g)
Determine rent reasonableness.	PBV: 24 CFR §983.303(f)(1) HCV: 24 CFR §982.352(b)(1)(iv)(A)(1)
Determine reasonableness of the sales price and any PHA-provided financing under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(iv)
Provide a copy of the rent reasonableness determination to the PHA and the HUD field office where the project is located.	PBV: 24 CFR §983.303(f)(2)
Notify the PHA and the family of the rent reasonableness determination.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(1)
Assist the family in negotiating the rent with the owner.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(2)
Establish term of initial and any renewal HAP contract as required in 24 CFR §983.205.	PBV: 24 CFR §983.59(b)(2)
Inspect units.	PBV: 24 CFR §983.59(b)(3)

Function	Applicable Program: Regulatory Basis
	PBV: 24 CFR §983.103(f)(1) HCV: 24 CFR §982.352(b)(1)(iv)(A)(3) Homeownership: 24 CFR §982.628 (d)(3)(i)
Provide a copy of the inspection report to PHA and HUD field office where the project is located.	PBV: 24 CFR §983.103(f)(2) and (3)
Communicate the results of the inspection to the family and the PHA.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(3)
Review the inspection report prepared by the independent inspector designated by the family under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(ii)
Review the contract of sale under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(iii)

- (a) Review of the PHA's PBV selection process. As it relates to the PBV selection process, the PHA may either choose to use an independent entity or request that the local HUD Office of Public Housing perform the review. Non-competitive selections must also be reviewed to ensure that the selection was done properly. At a minimum, the PHA must submit the following to the HUD Field Office or the independent entity, as applicable:
- (i) All proposals submitted for PBV assistance in connection with the particular selection, including proposals submitted for selection in accordance with 24 CFR §983.51(b)(2);
  - (ii) A copy of the relevant section of the PHA's Administrative Plan;
  - (iii) A copy of any standard operating procedures, worksheets, checklists, or any other work product used in the selection of PBV proposals; and
  - (iv) If the proposal was selected pursuant to a request for proposals in accordance with 24 CFR §983.51(b)(1), a copy of the solicitation; or
  - (v) If the proposal was selected pursuant to a qualifying previous competition in accordance with 24 CFR §983.51(b)(2), a copy of the proposal for the previous competition, and any award letter provided in connection with the previous competition. If proposals from a previous competition are not retrievable, other documentation that demonstrates that the requirements of 24 CFR §983.51(b)(2) are met (e.g., proposal selected within 3 years of the PBV proposal selection date, proposal

selected in accordance with the applicable program's competitive selection requirements, etc.).

The HUD Field Office or HUD-approved independent entity may request from the PHA additional documentation necessary to complete the review process. The PHA's selection procedures must apply to all PBV proposals and must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give undue preferential treatment (e.g., additional points) to PHA-owned units. The HUD Field Office or HUD-approved independent entity must provide a letter stating that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA's Administrative Plan before the PHA may finalize the selection process.

Under HOTMA, certain PBV units may be attached to a project without a competitive selection process. More information may be found in Attachment L of this notice.

The review of the PHA selection process is waived for RAD PBV conversions.

- (b) PBV rent determinations. The independent entity determines rent (initial rent to owner and redetermined rent to owner) for PHA-owned units in accordance with the same requirements as for other PBV units. PBV rent determination requirements are found at 24 CFR Part 983, Subpart G.

Rent to owner is redetermined by written notice from the independent entity to the PHA specifying the amount of the redetermined rent. The independent entity notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. Such amendments must be documented by a signed exhibit to the HAP contract.

The independent entity redetermines rent for RAD PBV units. That is, the independent entity is responsible for conducting the rent reasonableness determination and for processing Operating Cost Adjustment Factor (OCAF) adjustments for RAD PBV units.

- (c) Term of existing PBV HAP contracts. The term of a HAP contract and any HAP contract extension for PHA-owned units must be agreed upon by the PHA and the independent entity. HOTMA provides that the initial term of a HAP contract may be up to 20 years (increased from 15 years) and that a HAP contract may be extended for an additional 20 years (again, increased from 15 years). See Attachment G of this notice for more information about this change.
- (d) Inspection requirements. Independent entities are responsible for conducting all required inspections for PHA-owned units in accordance with program requirements. The PHA must provide families with up-to-date contact information for the independent entity and explain that a family requesting an inspection of the unit makes such a request directly to the independent entity. See Appendix IV of this notice for more information on HCV, Homeownership, and PBV inspection requirements.

- (3) HUD independent entity approval. This section discusses what information must be submitted, when it must be submitted, and other requirements related to the HUD independent entity approval process.

- (a) What information to submit. The PHA must include in its submission to the local HUD Office of Public Housing a joint PHA and independent entity certification, which certifies that the PHA and the proposed entity have no legal, financial, or any other connection that could cause either party to be improperly influenced by the other and that the proposed independent entity will perform its responsibilities as it relates to the PHA-owned units in an unbiased manner. The certification must be dated and signed by the executive director, or equivalent position, of the PHA and the independent entity. The certification must clearly state the name, address, and point of contact for both the PHA and the proposed independent entity.

The HUD Office of Public Housing retains the discretion to accept the certification on its face or to request additional information, or to use information available to the HUD Office, to question the validity of the certification.

- (b) When to submit. The PHA must submit the independent entity for approval before the function to be performed by the entity takes place. In determining when to submit the independent entity for approval, a PHA must consider the functions that are required to be performed by the independent entity, whether the PHA will use more than one independent entity for different functions, the HUD processing time, and how all of these elements interplay with the expected action (HCV HAP contract execution, homeownership closing, PBV proposal selection, etc.).
- (c) Using different independent entities. If the PHA plans to use different independent entities to perform different functions, or different independent entities at different projects, the PHA must submit for approval each independent entity it plans to use and identify the function the entity will perform. PHAs are not required to submit all independent entities at the same time.
- (d) Previously approved independent entities. Once an independent entity has been approved by HUD, the PHA may use that same independent entity for other PHA-owned units or for other functions. If the PHA will use an independent entity to perform a function other than the function for which the independent entity was previously approved, then the PHA must certify in writing to HUD that it will use a previously HUD-approved independent entity to perform a new function, which must be identified in the certification. The certification must include the name of the independent entity and be dated and signed by the executive director, or equivalent position, of the PHA. The certification must clearly state the name, address, and point of contact for both the PHA and the independent entity. The entity must be qualified to perform the function or the local HUD Office of Public Housing may deny approval. For example, a law firm that was previously approved to review a PBV selection review process

may not be an appropriate independent entity for the purpose of conducting inspections.

- (4) Payment for independent entity services. Payment for services performed by the independent entity are the responsibility of the PHA (24 CFR 983.59(d)). The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve (i.e., Unrestricted Net Position)). The PHA may not use other HUD program receipts to compensate the independent entity for its services. MTW agencies may use other sources of funds for these purposes provided that such use is consistent with the MTW agency's HUD-approved MTW plan. Neither the PHA nor the independent entity may charge any family that occupies or will occupy a PHA-owned unit any fee for the services provided by the independent entity.

## **Attachment C: Percentage Limitation (Program Cap) and PHA Submission Requirements**

**Regulation:** 24 CFR §983.6

**HOTMA Reference:** Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act

**Applicable Program:** PBV

**Summary of Change:** Under HOTMA, a PHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract (ACC) authorized units, instead of 20 percent of its voucher budget authority. HOTMA also establishes a 10 percent exception to this program cap (discussed in Attachment D), for units that meet the exception criteria. The changes implemented by the January 18, 2017, implementation notice supersede the reporting requirements at 24 CFR §983.6 and are explained in detail in paragraph (2), below. This Attachment C supersedes Notice PIH 2015–05, Section II, in its entirety.

**Content:** As described below, HOTMA authorizes a PHA to attach PBV assistance to not more than 20 percent of its ACC authorized units instead of 20 percent of its voucher budget authority. For purposes of this provision, the term “authorized units” means the number of units under the PHA’s current ACC. A PHA may confirm this number in the Inventory Detail feature of the Inventory Management System/PIH Information Center (IMS/PIC). IMS/PIC may be accessed at the following HUD webpage: [Inventory Management System \(IMS\)/PIH Information Center \(PIC\)](#).

HOTMA did not change the requirement that a PHA provide advance notice to its HUD field office of its intent to project-base vouchers. While a PHA is no longer required to submit evidence of sufficient budget authority as part of this advance notice, it must still ensure that it will have budget authority sufficient to cover the PBV HAP contract at the point of contract execution.

Among other things, this Attachment describes what must be submitted to HUD, when it must be submitted, how it must be submitted, and how HUD will respond.

- (1) **Calculations.** Appendix I provides PBV program cap calculation instructions that complement a sample *PBV Program Cap Calculation Worksheet*. The sample worksheet is available at the following webpage: [PBV Program Cap Calculation Worksheet](#). Use of the sample worksheet is optional, and submission to HUD is not required.
- (2) **Revised requirements for notification to HUD.**
  - (a) **What must be submitted.** The PHA must submit to the local HUD Office of Public Housing all of the following information:
    - (i) The number of units authorized under the ACC for the PHA;
    - (ii) The number of PBV units entirely excluded from the percentage limitation (as described in Attachment F of this notice);
    - (iii) The number of units qualifying under the 10 percent program cap exception category (as described in Attachment D of this notice);
    - (iv) The number of units currently committed to PBV (excluding those PBV



units meeting an exception under Attachment D or F of this notice). To arrive at the “number of units committed to PBV,” total the number of units that are:

- (I) Currently under PBV HAP contract;
  - (II) Under an Agreement to Enter into HAP contract (AHAP); and/or
  - (III) Covered by a notice of proposal selection (24 CFR §983.51(d)); and
- (v) The number of units to which the PHA is proposing to attach project-based assistance through the new RFP or selection.
- (b) When a PHA must submit information to HUD. The above information must be submitted no later than 14 calendar days prior to undertaking any of the following actions:
- (i) Issuing a request for proposals (RFP) (24 CFR §983.51(b)(1));
  - (ii) Selecting a project based on a previous competition (24 CFR §983.51(b)(2)); or
  - (iii) If applicable, selecting a project without following a competitive process (see Attachment L of this notice).
- (c) How to submit information to HUD. The required information must be submitted by email to [pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov).
- (d) HUD response. HUD will respond to the submission by email, identifying whether HUD has identified any issues with the submission. For example, if there is a material error in the PHA’s calculations that would result in the PHA exceeding the 20 percent percentage limitation, HUD will inform the PHA of this via email. A PHA must await a response from HUD prior to proceeding with the proposal.

HUD’s review and approval of the submission does not mean that it has confirmed availability of the PHA’s budget authority, as this is the responsibility of the PHA.

## **Attachment D: PBV Percentage Limitation — 10 Percent Increase for Eligible Units**

**Regulation:** 24 CFR §983.6

**HOTMA Reference:** Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act

**Applicable Program:** PBV

**Summary of Change:** Under HOTMA a PHA may project-base an additional 10 percent of its ACC authorized units above the 20 percent program limit, provided the additional units fall into one of the eligible exception categories.

**Content:** In this Attachment, the eligible exception categories are explained. The units eligible for inclusion in this 10 percent exception category may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. For example, if 10 percent of ACC authorized units is 100, the PHA may project base 50 units for homeless families and 50 units for units providing supportive housing to persons with disabilities or elderly persons.

### **(1) Exception Categories.**

- (a) Homeless.** The units are specifically made available to house individuals and families who meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR §578.3. The definition of homeless is included below for convenience:<sup>1</sup>
  - (i)** An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
    - An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
    - An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
    - An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
  - (ii)** An individual or family who will imminently lose their primary

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<sup>1</sup> See Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule.

nighttime residence, provided that:

- The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - No subsequent residence has been identified; and
  - The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- (iii) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 1437e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
  - Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- (iv) Any individual or family who:
- Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to

their primary nighttime residence;

- Has no other residence; and
- Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

- (b) Veterans. The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define “veteran” in its Administrative Plan for purposes of determining if the units are eligible for this exception. For example, a PHA may choose to include in its definition of “veteran” an individual with an “other than dishonorable” discharge status who is ineligible for healthcare provided through the Veterans Health Administration. PHAs have discretion in establishing verification of eligibility.

HUD-awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding are already excluded from the program cap and are not to be included under this 10 percent exception category. See Attachment F of this notice for additional information.

- (c) Supportive services. The units provide supportive housing to persons with disabilities or to elderly persons. For the purpose of this exception, supportive housing means: A project that makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):

- meal service adequate to meet nutritional need;
- housekeeping aid;
- personal assistance;
- transportation services;
- health-related services;
- case management;
- child care;
- educational and employment services;
- job training;
- counseling; or
- other services designed to help the recipient live in the community as independently as possible.

A PHA must include in its Administrative Plan the types of services offered to families for a project to qualify for the exception and the extent to which such services will be provided (e.g., length of time services will be provided to a

family, frequency of services, and depth of services). Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA must not require participation in the supportive services as a condition of living in an excepted unit.

In accordance with 24 CFR §983.354, with the exception of an assisted living facility, the owner of a PBV project may not require the assisted family to pay charges for meals or supportive services, and non-payment of such charges by the family is not grounds for termination of tenancy. In the case of an assisted living facility (as defined in 24 CFR §983.3) receiving PBV assistance, owners may charge families for meals or supportive services. These charges may not be included in the rent to owner or the calculation of reasonable rent.

- (d) Poverty rate of 20 percent or less. The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. A project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located. To view poverty rates by census tract, click [here](#).

The above categories are separate and distinct from exceptions to the income-mixing requirement (project cap), which limits the number and percentage of units within a particular project to which PBV assistance may be attached. These exceptions are discussed in Attachment E of this notice. (Units that are exempt from both the program cap and the project cap are discussed in Attachment F.)

- (2) Impact on existing contracts. PBV units that fall into one of the four categories listed above may be covered by this 10 percent exception authority only if the units are covered under a HAP contract that was first executed on or after April 18, 2017 (the effective date of the January 18, 2017, implementation notice).

Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for this 10 percent exception authority.

A PHA need not meet the 20 percent program cap before it can designate eligible units for the 10 percent exception category. For example, if a PHA has project-based 10 percent of its units under the percentage limitation and wants to project-base 5 percent of its units under the 10 percent exception category, it may do so. This PHA would have 10 percent remaining under the percentage limitation and 5 percent remaining under the 10 percent exception authority.

A PHA proposal that would result in the PHA exceeding either the 20 percent program cap or the 10 percent exception from the program cap will be rejected by the HUD field office. As long as a PHA has not exceeded the 30 percent limit, it may correct its proposal by moving units from one category to the other, as long as only eligible units are counted toward the 10 percent exception from the program cap.

- (3) Submission requirements. See Appendix I on calculating the number of voucher units that may be project-based. If a PHA wishes to add PBV units under this exception authority, then the PHA must identify the exception category for which the additional units will be project-based and the specific number of units that qualify under the exception category in its transmittal of the submission requirements described in Attachment C of this notice.

## **Attachment E: Income-Mixing Requirement (Project Cap)**

**Regulation:** 24 CFR §983.56(a), 24 CFR §983.56(b)(1) and (2), 24 CFR §983.261(c) and (d)

**HOTMA Reference:** Sec. 106(a)(3), which amends Sec. 8(o)(13)(D) of the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA amends the income-mixing requirement for an individual project (i.e., the project cap) so that the limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. Previously, the limitation was 25 percent of the units in a project.

HOTMA also makes changes to the exceptions to the project cap. The following units are excluded from the 25 percent or 25-unit project cap:

- Units exclusively serving elderly families.
- Units housing households eligible for supportive services available to all families receiving PBV assistance in the project.

Also, units in projects that are in a census tract with a poverty rate of 20 percent or less are subject to a higher (40%) cap.

Lastly, HOTMA provides that HUD may establish additional requirements for monitoring and oversight of projects in which more than 40 percent of the dwelling units are assisted under a PBV HAP contract.

The previous statutory definition of project for these purposes remains the same. That is, a project may be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. See Appendix II, paragraph (7), of this notice for more information.

### **Content:**

- (1) Project cap. The limitation on the number of units that may be project-based in an individual project is now the greater of 25 units or 25 percent of the units in a project. Below is an example to help illustrate this change. This example is meant only to illustrate this change, and does not take into account the exceptions discussed later in this section.

**Project Cap: Example**

Total Units in ABC Project	60
Post-HOTMA Project Cap (greater of 25 units or 25 percent of units in project)	25
Pre-HOTMA Project Cap (25 percent of units in project)	15

If a project contains 25 or fewer units, the PHA may place every unit in the project under the PBV HAP contract.

- (2) Exceptions to project cap. An exception to the project cap means that a particular category of units is excluded altogether from the 25 percent or 25-unit project cap. As of April 18, 2017, the exceptions to the project cap are:

- Units exclusively serving elderly families.
- Units housing households eligible for one or more supportive services available to all families receiving PBV assistance in the project.

A PHA is not limited with respect to the number of units in a project it can make available for an excepted category or categories. A PHA may designate 100 percent of the units in a project for occupancy by an excepted category (or categories).

Prior to HOTMA, dwelling units specifically made available for households comprised of elderly families, families with a household member with disabilities, and families receiving supportive services were excepted from the project cap. HOTMA retains the exception for elderly families. It modifies the exception for families receiving supportive services so that such families must simply be “eligible for” supportive services (see section (3)(b) of this attachment). HOTMA eliminates the exception for families with a household member with disabilities.

With respect to PBV units that were excepted from the income mixing requirement under the pre-HOTMA exception for families with a household member with disabilities, the PHA must generally continue to operate under the terms of that existing contract. In other words, the pre-HOTMA exception for families with a household member with disabilities continues to apply for those units and the PHA would refer families with a household member with disabilities to the owner to fill vacancies for units covered by this pre-HOTMA exception under the HAP contract. See section 6 of this attachment for information on the impact of the HOTMA changes on excepted units for existing contracts and how changes can be made to serve additional populations.

#### Exceptions to Project Cap: Example

ABC Project has a total of 60 units. Twenty of the 60 units are PBV units specifically for elderly families. Units exclusively serving elderly families are excepted from the project cap. The project cap for ABC Project is 25 units (greater of 25 units or 15 units (25 percent of units in project)). A total of 45 units may be project-based in ABC Project (project cap of 25 plus the 20 excepted units).

- (3) Qualifying families. With respect to units excepted from the income mixing requirement under the HOTMA exception categories, the PHA may refer only qualifying families for occupancy of excepted units under (a) and (b) below.

- (a) Units for elderly families. Units that are exclusively made available to elderly families are excepted from the project cap. The term elderly family is defined in 24 CFR §5.403 as follows: “Elderly family means a family whose head



(including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.”

It is not necessary that the entire project or buildings within the project be designated as elderly in order for the exception to apply. Under the PBV program, projects are not “designated” as elderly as is the case in other programs, such as the Public Housing or Section 202 Elderly Programs. The owner must identify under the HAP contract, however, the particular number of units that are exclusively made available for elderly families. As each unit turns over, the PHA may amend the HAP contract to transfer the exception status from one unit to another, provided it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 24 CFR §983.207(a).

As provided under 24 CFR §983.262(e), a PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death or long-term or permanent hospitalization or nursing care of the elderly family member), the elderly family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family, unless it is possible to transfer the exception status to another unit as described in the paragraph above.

- (b) Units for households eligible for supportive services. Under HOTMA, dwelling units that are exclusively made available to “households eligible for supportive services that are made available to the assisted residents of the project, according to the standards for such services the Secretary may establish” are excepted from the project cap. Previously, the supportive services exception applied only if the family was receiving supportive services.

In order for the supportive services exception to apply to a unit, the project must make supportive services available to all assisted families in the project, and the family must be eligible for one or more of the services. The family may, but is not required to, participate in the services. A PHA may not require participation in supportive services as a condition of living in an excepted unit, which means that a PHA may not rely solely on a supportive services program that would require the family to engage in the services once enrolled, such as the Family Self-Sufficiency (FSS) program, for the unit to qualify for the supportive services exception.

The exception applies to any household eligible for the supportive services and is not limited to households with a family member with a disability. The supportive services do not need to be provided by the owner or on-site, but the services must be reasonably available to the families receiving PBV assistance

in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible.

A PHA must include in its Administrative Plan the type of services offered to families for the units to qualify under the exception and the extent to which such services will be provided (e.g., length of time services will be provided to a family, frequency of services, and depth of services). A PHA may offer FSS as part of the supportive services package, but must not rely solely on FSS to meet the exception.

HUD encourages PHAs to consider how the structure of their supportive services package may impact a family's continued eligibility for the supportive services and the unit's excepted status. The unit loses its excepted status if the family becomes ineligible for the supportive services during its tenancy, provided that: (i) the family becomes ineligible for *all* supportive services available to the family, *and* (ii) the family becomes ineligible for reasons other than successfully completing the supportive services objective. A family that becomes ineligible for the supportive services during its tenancy cannot be terminated from the program or evicted from the unit. If the unit loses its excepted status, and the PHA does not want to reduce the number of excepted units in its project-based portfolio, the PHA may:

- (i) Substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with 24 CFR §983.207(a). A PHA may wish to consider whether adding units to the HAP contract is an appropriate strategy to allow for the substitution of units. For example, Bay View Project has a total of 100 units. 50 of those units are under a PBV HAP contract and are all excepted units. In this case, the PHA may add non-excepted units to the contract (provided it is possible to do so under PBV requirements) to allow for the substitution of the excepted unit for the non-excepted unit. See section 6 of this attachment for more information on adding units to existing HAP contracts.
- (ii) Remove the unit from the PBV HAP contract, and provide the family with tenant-based assistance. Once the family has moved from the unit, add the unit back to the contract in accordance with 24 CFR §983.207(b), as amended by HOTMA. Any family newly admitted to the unit must be eligible for supportive services in order for the unit to retain its excepted status.

In the case of a family that chooses to participate in the supportive services, as described by the PHA in the Administrative Plan, and successfully completes the supportive services objective, as defined by the PHA in its Administrative Plan, the unit will continue to be an excepted unit under this category for as long as the family resides in the unit.

- (4) Other units not subject to the percentage limitation and project cap. The details and requirements of this exception category are described in Attachment F of this notice.

- (5) Increased project cap. Up to the greater of 25 units or 40 percent (instead of the greater of 25 units or 25 percent) of the units in a project may be project-based when the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. A project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located. To view poverty rates by census tract, click [here](#).

HOTMA also provides that the 40 percent unit exception applies to projects in areas where vouchers are difficult to use, as determined by HUD. HUD has not yet defined and implemented the exception authority for these “difficult to use” areas. Therefore, the 40 percent exception applies only to census tracts with poverty rates of 20 percent or less until further notice.

#### Increased Project Cap: Example

ABC Project has a total of 80 units. ABC Project is located in a census tract with a poverty rate of 20 percent or less. The project cap for ABC Project is 32 units (greater of 25 units or 32 units (40 percent of units in project)).

- (6) Effect on existing contracts. Owners under HAP contracts in effect prior to April 18, 2017, the effective date of the January 18, 2017, implementation notice, remain obligated by the terms of those HAP contracts with respect to the requirements that apply to the number and type of excepted units in a project. That is, the owner must continue to designate the same number of contract units and assist the same number and type of excepted units as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements.

#### Effect on Existing Contracts: Example

An owner has a PBV HAP contract for a 20-unit project, and the HAP contract provides that 15 of those units were excepted from the 25 percent income-mixing requirement, because the units are designated for elderly families. The owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.

The PHA and owner may agree to change such HAP contract requirements as it pertains to the exception categories of elderly families and families eligible for

supportive services. The PHA and owner must not change the terms of an existing HAP contract to add a new category of excepted unit (such as those under a rent restriction as defined in Attachment F of this notice), because those provisions may only be applied to contracts that become effective on or after April 18, 2017, the effective date of the January 18, 2017, implementation notice.

For projects that are using the former supportive services statutory exemption (which required that the family be receiving the supportive services) and /or the exemption for families with a household member with disabilities, the PHA and the owner will continue to operate under the pre-HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the PHA and the owner agree by mutual consent to change the conditions to conform with the HOTMA requirement. The PBV HAP contract may not be changed to conform with the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g., the excepted units at the project include units designated for families with a household member with disabilities, and changing to the HOTMA standard would result in those units no longer being eligible as excepted units unless the owner makes supportive services available to all assisted families in the project).

A HAP contract may be amended, at the discretion of the PHA, to add additional PBV units in the same project. PHAs may use this amendment process to add units where applying the new project cap definition results in more PBV units. For example, ABC Project has a total of 60 units. The pre-HOTMA project cap was 15 units. The post-HOTMA project cap is 25 (greater of 25 units or 15 units (25 percent of units in project)). The existing PBV HAP contract had no excepted units. The PHA, at its discretion, may amend the HAP contract to add the 10 additional units that result from the HOTMA project cap definitional change.

As it pertains to the amendment process to add new units to an existing HAP contract, HOTMA overrides existing regulation, so that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures. See Attachment J for more information about this change. All other requirements of 24 CFR §983.207(b) must be met, including not exceeding the 20 percent program cap (see Attachment C of this notice for more information on the 20 percent program cap).

- (7) No HUD notification requirement. Unlike the program cap, there is no requirement to submit PBV project cap information to HUD.

**Attachment F: Units Not Subject to Percentage Limitation (Program Cap) or Income-Mixing Requirement (Project Cap)**

**Regulation:** 24 CFR §983.6, 24 CFR §983.56(a), 24 CFR §983.56(b)(1) and (2)

**HOTMA Reference:** Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act, and Sec. 106(a)(3), which amends Sec. 8(o)(13)(D) of the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA provides that certain units do not count toward the PBV percentage limitation and are exempt from the income-mixing requirement when PBV assistance is attached to them.

**Content:** The following categories of units are excluded from both the percentage limitation and the income-mixing requirement if placed under HAP contract on or after April 18, 2017:

- (1) Excepted units. Units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation or the income-mixing requirement.

The following categories of units in (a) or (b) are eligible for this exception provided they also meet the conditions described in (c) below:

- (a) The unit received one of the following forms of HUD assistance:
- (i) Public Housing Capital or Operating Funds (section 9 of the Act);
  - (ii) Project-Based Rental Assistance (section 8 of the Act), including units assisted under the section 8 moderate rehabilitation (Mod. Rehab.) program and Mod. Rehab. single-room occupancy (SRO) program;
  - (iii) Housing for the Elderly (section 202 of the Housing Act of 1959);
  - (iv) Housing for Persons with Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act);
  - (v) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965);
  - (vi) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act); or
  - (vii) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

*or*

- (b) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:
- (i) Section 236;
  - (ii) Section 221(d)(3) or (d)(4) BMIR;
  - (iii) Housing For the Elderly (section 202 of the Housing Act of 1959);
  - (iv) Housing for Persons With Disabilities (section 811 of the Cranston-

Gonzalez National Affordable Housing Act); or

- (v) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception.

- (c) In addition to having received HUD assistance or having been subject to rent restrictions as described in parts (a) and (b) above, the unit must meet the following applicable conditions to qualify for this exception:

- (i) PBV Existing and Rehabilitated Units.

For units that will be placed under PBV as existing or rehabilitated units:

- (I) The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017; *and*
    - (II) In the 5 years prior to the date the PHA either (aa) issued the RFP under which the project was selected, or (bb) selected the project based on a prior competition or without competition, the unit met at least one form of assistance or was subject to a rent restriction as described above. If the existing/rehabilitated project was selected based on a prior competition or without competition, then the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR §983.51(d).

- (ii) PBV New Construction.

A newly constructed unit developed under the PBV program may also be excluded from the limitation, provided the unit qualifies as a replacement unit. The unit must meet *all* of the following requirements to meet this exception to the limitation:

- (I) The unit that the PBV newly constructed unit is replacing (i.e., the original unit) must have received one of the forms of HUD assistance or must have been subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either:
      - (aa) Issued the RFP under which the PBV new construction project was selected; or
      - (bb) Selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, then the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR §983.51(d).

- (II) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project qualifies as the same site as long as a majority of the replacement units is built back on the site of the original development, and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.
  - (III) One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by *at least one* of the following:
    - (aa) Former residents of the original project are provided with a selection preference that provides the residents with the right of first occupancy at the PBV new construction project; or
    - (bb) Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.
  - (IV) The HAP contract first became effective on or after April 18, 2017.
- (2) Unit-size configuration, number of units. The unit-size configuration of a PBV new construction or rehabilitation project may differ from the unit-size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the percentage limitation exception be applied to units that exceed the total number of covered units in the original project. For example, a PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the program and project limitation exception would be 40 units. The remaining 10 PBV units would count against the program and the project limitation.
- (3) Applicability of PBV project-selection requirements. For owner proposals involving excepted units for existing, rehabilitated, and newly constructed properties, the standard requirements for selecting projects and the units for PBV assistance — including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements — remain in effect. The only difference is that any PBV assistance provided to these properties does not count against the 20 percent program cap and may be used to project-base up to 100 percent of the units in the project. The provisions of Notice PIH 2013–27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remain in effect. This means that, in the event of a Housing Conversion Action at a project, HCV assistance may be project-based at the project, but only if the requirements of Notice PIH 2013–

27 are met. Units at the project for which a family has voluntarily relinquished enhanced voucher assistance for PBV assistance do not count against a PHA's program cap, nor the income-mixing requirement.

These exceptions may be applied only to projects that were not already under HAP contract as of April 18, 2017 (the effective date of the January 18, 2017, implementation notice). The exception may not be applied retroactively to projects under HAP contracts that commenced before April 18, 2017, or subsequently applied at the extension of those HAP contracts.

(4) Other units not subject to the percentage limitation or income-mixing requirement.

(a) RAD. HUD has waived the statutory and regulatory provisions regarding the 20 percent percentage limitation for RAD PBV units. Under HOTMA, neither are such units subject to the income-mixing requirement, as long as they meet the conditions in section (1) of this attachment. This means that a PHA that is administering RAD PBV assistance does not take the voucher units attributable to the RAD PBV contracts into consideration when calculating the 20 percent limitation. In other words, the units committed to RAD PBV are excluded from both the numerator and the denominator when calculating the number of voucher units that may be project-based. This exception applies regardless of the effective date of the HAP contract.

(b) HUD-VASH. HUD has awarded vouchers specifically designated for project-based assistance out of the HUD-VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these PBV HUD-VASH set-aside voucher allocations were made specifically for PBV assistance, HUD has determined that the PBV units supported by those vouchers will not count against the PHA's PBV program cap, for as long as the vouchers remain under PBV HAP contract at the designated project.. This means that a PHA will exclude these PBV HUD-VASH units from both the numerator and the denominator when calculating the number of authorized ACC units that are available for project-basing.

All other HUD-VASH vouchers, including non-set aside HUD-VASH vouchers that a PHA chooses to project-base, are subject to the percentage limitation.

Calculations. See Appendix I for instructions on how to calculate the number of voucher units that may be project-based when certain units no longer count toward the percentage limitation.

(5) Reporting requirement. If a PHA wishes to add PBV units under the program cap exceptions described above, then the PHA must provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. This information must be submitted by email to [pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov).

A PHA is not required to report future RAD projects for which it will be attaching



PBV assistance, or future HUD-VASH awarded vouchers specifically designated by HUD for project-based assistance. Unlike the program cap, there is no requirement to submit PBV project cap information to HUD.

## **Attachment G: PBV HAP Contract: Initial Term and Extensions**

**Regulation:** 24 CFR §983.205

**HOTMA Reference:** Sec. 106(a)(4) & (5), which amend Secs. 8(o)(13)(F) & (G) of the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA amends Sec. 8(o)(13)(F) of the Act to provide that the initial term of a Housing Assistance Payments (HAP) contract may be up to 20 years (increased from 15 years) and Sec. 8(o)(13)(G) to provide that a contract may be extended for an additional 20 years (again, increased from 15 years).

**Content:** This section overrides 24 §CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirement on the timing of extensions following the initial extension of the contract term. (The timing of when extensions of the term may be approved is described in detail below.)

- (1) Initial term. As of April 18, 2017, a PHA may enter into a new PBV HAP contract with an owner with an initial term of up to 20 years. As was the case previously, the length of the initial term of the HAP contract may not be less than one year.
- (2) Maximizing the initial term. For any PBV HAP contract that is still within the initial term, the PHA and the owner may mutually agree to extend the contract for up to the maximum initial term of 20 years.

For example, if the HAP contract has an initial term of 15 years with an effective date of January 1, 2015, the initial term of the contract ends on December 31, 2029. At any time before the end of the initial term, the PHA and owner may mutually agree to extend the initial term for an additional 5 years to reach the 20 year maximum initial term. For instance, in this example the PHA and owner may extend the initial term to December 31, 2034, provided they do so no later than December 31, 2029.

However, if the HAP contract is no longer in the initial term, the PHA and owner *cannot* extend the initial term, although they may enter into an extension beyond the initial term (see below).

Assume the PHA and owner entered into a HAP contract with a 10 year initial contract term on January 1, 2000. The initial term ended on December 31, 2009. During the initial term, the PHA and owner extended the contract term for 10 additional years. As a result, the HAP contract remains in effect until December 31, 2019. In this case, the PHA and owner are not able to extend the initial term of this HAP contract to 20 years because the contract already is beyond the initial term. (However, the PHA and owner may mutually agree to further extend the current 10 year extension as discussed below.)

- (3) Extension of the term. The PHA may extend the term of the contract for up to 20 years at any time during the initial HAP contract term, provided the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.

The PHA may extend the term multiple times at any time during the term of the

contract, provided that extension beyond the initial term does not exceed 20 years, cumulatively. (See examples below.)

- (4) Subsequent extensions beyond 20 years. A PHA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

- (a) The PHA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;
- (b) This determination must be made no earlier than 24 months prior to the expiration of the HAP contract.
- (c) The term of the new extension may not exceed 20 years.

Regardless of the length of the extension, all such extensions must meet these same conditions.

- (5) PHA owned units. In the case of PHA-owned units, any changes to the term of an initial HAP contract or any contract extension must be agreed upon by the PHA and the independent entity, in accordance with 24 CFR §983.59.
- (6) Initial Term and Extension Examples. The following examples are intended to illustrate a number of common scenarios regarding HAP contract initial terms and extensions.

#### Scenario 1

The PHA and owner wish to enter into a new PBV HAP contract effective January 1, 2018, for the maximum time period that is permitted under the PBV program. The maximum contract term that the PHA may commit is 40 years.

Contract	Term	Start Date	End Date	Notes
Initial Term	20 yrs	1/1/18	12/31/37	Maximum 20 year term.
Extension	20 yrs	1/1/38	12/31/57	PHA may extend at any time before 12/31/37.
Total Term	40 yrs	1/1/18	12/31/57	Any further extension may not be determined prior to 12/31/55 (24 months prior to expiration date of the 20-year extension.)

### Scenario 2

HAP contract is currently in effect with the following term:

Current Term	Term	Start Date	End Date	Comments
Initial Term	15 yrs	1/1/16	12/31/30	PHA and owner entered into a 15 year initial term, which was the maximum initial term at the time.
Extension	15 yrs	1/1/31	12/31/45	PHA and owner have previously agreed to 15 year extension.
Total Term	30 yrs	1/1/16	12/31/45	Contract is at pre-HOTMA maximum term of 30 years.

Following the implementation of the HOTMA provision, for example in July 2017, the PHA and owner mutually agreed to extend this contract's initial term and the extension to the maximum term that is permitted under HOTMA.

Revised Term	Term	Start Date	End Date	Comments
Initial Term	20 yrs	1/1/16	12/31/35	Because the HAP contract is still in the initial term, the initial term may be adjusted. It is now the maximum 20 years.
Extension	20 yrs	1/1/36	12/31/55	PHA and owner also revised the length of the existing extension to the 20 year maximum.
Total Term	40 yrs	1/1/16	12/31/55	Contract is at post-HOTMA maximum term of 40 years. PHA may consider further extension but not until 12/31/53.

### Scenario 3

The HAP contract has the following terms.

Current Term	Term	Start Date	End Date	Comments
Initial Term	10 yrs	1/1/05	12/31/14	Initial term is over.
Extension	15 yrs	1/1/15	12/31/29	PHA and owner have previously agreed to 15 year extension.
Total Term	25 yrs	1/1/05	12/31/29	Contract is currently for 25 years.

Following the implementation of the HOTMA provision, the PHA decides it wants to extend the contract so that the term is 40 years. However, the PHA cannot extend the initial term since it has already been completed. The PHA is also limited to extending

the contract beyond the initial term to no more than 20 years at the present time. The maximum term the PHA could provide at this time is 30 years, with the understanding that the PHA will consider further extending the contract when the contract is within 24 months of the revised expiration date.

<b>Revised Term</b>	<b>Term</b>	<b>Start Date</b>	<b>End Date</b>	<b>Comments</b>
Initial Term	10 yrs	1/1/05	12/31/14	No change – the initial term is already over and may not be extended.
Extension	20 yrs	1/1/15	12/31/34	After April 18, 2017, the PHA and owner have now increased the extension from 15 years to the maximum of 20 years beyond the end of the initial term.
Total Term	30 yrs	1/1/05	12/31/34	Contract has maximum term of 30 years.
Future Extension	May not exceed 20 years	1/1/35	TBD	PHA may consider further extension no earlier than 12/31/32 (24 month requirement).

#### Scenario 4

The PHA enters into a new HAP contract effective 1/1/18 for the maximum 20 year initial term. The PHA wishes to extend the contract but for no more than 10 years at a time.

<b>Contract Term</b>	<b>Term</b>	<b>Start Date</b>	<b>End Date</b>	<b>Comments</b>
Initial Term	20 yrs	1/1/18	12/31/37	
Potential Extension #1	10 yrs	1/1/38	12/31/47	PHA may approve this first extension anytime before the initial term expires on 12/31/37.
Potential Extension #2	10 yrs	1/1/48	12/31/57	PHA may approve this second extension anytime before the first extension expires on 12/31/47.
Potential Extension #3	10 yrs	1/1/58	12/31/67	PHA may not make the determination to approve this extension earlier than 12/31/55 (24 months prior to the expiration of the previous extension), because any further extension will exceed the 20-year limit from the end of initial term.

<b>Contract Term</b>	<b>Term</b>	<b>Start Date</b>	<b>End Date</b>	<b>Comments</b>
Potential Extension #4	10 yrs	1/1/68	12/31/77	PHA may not make the determination to approve this future extension earlier than 12/31/65 (24 months prior to the expiration of the previous extension), because the contract is now more than 20 years beyond the end of the initial term.

Once the extension beyond the initial term has reached 20 years, cumulatively, the PHA may not further extend the contract without first determining such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities, and the PHA may not make that determination more than 24 months prior to the expiration of the previous extension. In this example, the PHA must fulfill that requirement starting with the 3<sup>rd</sup> potential extension, since the combination of the first and second extensions (each for 10 years) have reached the 20 year maximum.

## **Attachment H: Priority of PBV HAP Contracts**

**Regulation:** 24 CFR §983

**HOTMA Reference:** Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(i)(I) of the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA establishes a new Sec. 8(o)(13)(F)(i)(I), which requires that, in the event appropriated funds are insufficient to fund all vouchers administered by a PHA, the PHA must implement cost-savings measures before terminating any PBV HAP contract.

**Content:** Cost-saving measures that must be taken prior to terminating assistance contracts are found in Notice PIH 2011–28 (“Cost-Saving Measures in the Housing Choice Voucher (HCV) Program”) or subsequent notices. If a PHA implements all of these cost-saving measures and still has insufficient funds to cover its housing assistance payments, then the PHA may choose to terminate payments under its HCV or PBV programs.

A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance.

A PHA may determine which type of assistance (HCV or PBV) to terminate first and must identify in its Administrative Plan the factors it considered in making this determination.

## **Attachment I: PBV Biennial Inspections**

**Regulation:** 24 CFR §983.103

**HOTMA Reference:** Sec. 106(a)(4), which amends Sec. 8(o)(13)(F) of the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA modifies the statutory language regarding the inspection of PBV-assisted units to clarify that biennial inspections of PBV-assisted properties may be conducted using a sample of units. There is no change to the regulatory requirements at 24 CFR §983.103.

**Content:** The HOTMA change merely clarifies that the use of sampling is authorized for PBV-assisted units; it does not affect the guidance in Notice PIH 2016–05 (“Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies”), which remains in effect. Additionally, HOTMA does not change 24 CFR §983.103(d), governing biennial inspections. Attachment K to Notice PIH 2016–05 provides guidance to PHAs that wish to adopt alternative inspection methods.



## **Attachment J: Adding Units to PBV HAP Contract Without Competition**

**Regulation:** 24 CFR §983.207(b)

**HOTMA Reference:** Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(ii) of the Act

**Applicable Program:** PBV

**Summary of Change:** Prior to HOTMA, the regulation at §983.207(b) stipulated that a HAP contract could be amended to add units only during the 3-year period following the HAP execution date, and that, within this timeframe, a new PBV Request for Proposals would not be required. HOTMA overrides the regulation, stating that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures.

**Content:** As of April 18, 2017, any existing PBV HAP contract, including a contract entered into prior to April 18, 2017, may be amended to add units by mutual agreement of the PHA and owner without competitive selection. The amendment is subject to all PBV requirements, including those requirements described below.

- (1) Percentage limitation. The amendment must comply with Sec. 8(o)(13)(B) and 24 CFR §983.6, which require that a PHA may project-base not more than 20 percent of its authorized units, with some types of units excepted from this program cap. HOTMA changed how this percentage limitation is to be calculated. See Attachment C and Appendix I of this notice for instructions on how to make the calculation and report the results to HUD, both of which must be done prior to amending a contract to add units.
- (2) Income-mixing requirement (project cap). The amendment must comply with Sec. 8(o)(13)(D) and 24 CFR §983.56, which limit the number or percentage of units in any one project to which PBV assistance may be attached, with exceptions for certain types of units. HOTMA made changes to the income-mixing requirement. See Attachment E of this notice for further information on the PBV income-mixing requirement. Any units added on or after April 18, 2017, must fall under one of the HOTMA exception categories in order for the unit to be excepted from the income-mixing requirement.
- (3) Rent reasonableness. The rents for the units added to the contract via amendment must comply with Sec. 8(o)(10)(A) and §983.303, which require that rents be reasonable. If the units newly added to the contract have rents that do not exceed the rents charged for units under the original contract or for comparable unassisted units in the project, then the rents for the newly added units will be considered to be reasonable.
- (4) Administrative Plan. Whether to add units to a contract is an option that is available at the discretion of a PHA. A PHA that intends to add PBV units in this manner must state in its Administrative Plan that it will do so and must provide its rationale for adding PBV units to specific projects.
- (5) Amendment of RAD PBV HAP contract. A PHA may not amend a RAD PBV HAP contract to add units above the number included in the initial contract.

A PHA may amend its PBV HAP contract to add units without competitive selection during the term of an initial HAP contract or during the term of any extension of that contract. The

amendment may also occur at the point of initial contract extension or at the point of any subsequent extension, so that the contract extension will have a greater number of units than the previous contract. However, the anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally in place under the HAP contract.

24 CFR §983.58(c) does not apply when PBV units are added to a current PBV HAP contract. In other words, an environmental review is not required, and there is therefore no need for any sort of determination by a responsible entity.

## **Attachment K: PBV Contract Termination or Expiration without Extension**

**Regulation:** 24 CFR §983

**HOTMA Reference:** Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(iv) of the Act

**Applicable Program:** PBV

**Summary of Change:** With respect to a PBV HAP contract, HOTMA requires the contract to specify that, upon termination or expiration of the contract without extension, an assisted family may elect to remain in its unit and use the assistance previously provided under the contract, as long as the unit meets HUD's housing quality standards and the rent for the unit is reasonable. In such a circumstance, the family may choose to move or to remain in the unit. If the family remains, it will pay its required share of the rent in addition to the amount, if any, by which the gross rent exceeds the applicable payment standard. HOTMA also authorizes HUD to establish additional contract conditions.

**Content:** This provision applies to all PBV HAP contracts in effect as of April 18, 2017, and all contracts entered into on or after April 18, 2017. HOTMA establishes for PBV-assisted families a right to remain in the project at the end of the PBV HAP contract with tenant-based assistance for as long as the project is used for rental housing and the unit is otherwise eligible for HCV assistance.

- (1) **Owner notification.** For any contract entered into prior to April 18, 2017, that remains in effect on that date, a PHA must notify the owner in writing that this provision is in effect. The notice must contain the following language:

“Pursuant to Section 106(a)(4) of the Housing Opportunity Through Modernization Act of 2016 and Paragraph 26.b. of Part 2 of the PBV HAP Contract for Existing Housing or Paragraph 27.b. of Part 2 of the PBV HAP Contract for New Construction or Rehabilitation, such contract is amended to provide that, upon termination or expiration of the contract without extension, each family assisted under the contract may elect to use its assistance to remain in the same project if the family's unit complies with the inspection requirements under section 8(o)(8) (42 U.S.C. 1437f(o)(8)) of the U.S. Housing Act of 1937 (“the 1937 Act”), the rent for the unit is reasonable as required by section 8(o)(10)(A) of the 1937 Act, and the family pays its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard.”

Any contract entered into on or after April 18, 2017, must include this language.

- (2) **Statutory notice.** Per the statutory notice requirements at Sec. 8(c)(8) and 24 CFR §983.206, not less than 1 year prior to the termination or expiration without extension of a HAP contract, an owner must provide notice to both the PHA and affected tenants. An owner who fails to provide such notice must permit tenants to remain in their units for the required notice period with no increase in the tenant portion of the rent. During this time period, an owner may not evict a tenant as a result of the owner's inability to collect an increased tenant portion of rent. With PHA agreement, an owner may renew the terminating contract for a period of time sufficient to give tenants 1 year's advance notice. For families who wish to remain at the property, the

- HCV assistance does not commence until the end of the owner's required notice period.
- (3) Housing quality standards. In order for the family to remain at the project with tenant-based HCV assistance, the unit must meet the HQS requirements of the HCV tenant-based program, including initial inspection requirements. HOTMA made a number of changes related to the initial inspection requirements. (See Notice PIH 2017–20, issued October 27, 2017.)
  - (4) Effective date of HCV HAP and family leases. The transition from PBV HAP units to HCV HAP units will require the PHA and owner to plan to assure continued payments for families under lease and continued payments to the owner of units under HAP. The following requirements apply:
    - (1) A PHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the PBV contract termination or expiration date.
    - (2) A PHA may not commence the tenant-based HCV housing assistance payment to an owner until the HCV tenant-based HAP contract has been executed.
    - (3) The HCV HAP contract may not be executed before the PHA approves the assisted tenancy in accordance with 982.305. An HCV HAP contract for a family must be executed no later than 60 calendar days from the start of the family's lease. PHAs are encouraged to approve the assisted tenancy and execute the HCV HAP contract without need for the 60-day grace period. If this is not possible, then, as long as the HCV HAP contract is executed during the 60-day grace period, once it has been executed, the PHA may pay the owner retroactively to the start date of the family's lease term.
    - (4) If the HCV HAP contract has a different rent than did the PBV HAP contract, and the new rent is determined by the PHA to be reasonable, then the PHA will use the new gross rent to calculate the family's HCV HAP going forward. The family will be responsible for paying the new family rent to owner starting from the effective date of the HCV HAP contract.
  - (5) Inapplicability of HCV eligibility requirements. Per the current definition of "admission" in 24 CFR §983.3, a family that receives a tenant-based HCV pursuant to this newly enacted provision is not a new admission to the HCV program and is not subject to income-eligibility or any other admission requirement. The family does not count toward the PHA's income-targeting requirements at 24 CFR §982.201(b)(2)(i).
  - (6) Termination of tenancy by owner. An owner may not terminate the tenancy of a family that exercises its right to remain except for in response to serious or repeated lease violations, or other good cause.
  - (7) Family payment toward rent. A family that remains in its unit with continued tenant-based HCV assistance must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount by which the unit rent exceeds the applicable payment standard. The family's initial share of the rent may exceed 40 percent of the family's adjusted monthly income, irrespective of the normally

applicable restriction on the amount a family may pay when initially assisted in any unit at 24 CFR §982.305(a)(5).

- (8) HCV program rules. All other HCV program rules apply to families who remain in the project.

With respect to additional contract conditions, HUD has chosen not to adopt any such conditions at this time.

## **Attachment L: Attaching PBVs to Certain PHA-Owned Projects Without Following a Competitive Process**

**Regulation:** 24 CFR § 983.51(b)

**HOTMA Reference:** Sec. 106 (a)(9), which adds Sec. 8(o)(13)(N) to the Act

**Applicable Program:** PBV

**Summary of Change:** HOTMA adds section 8(o)(13)(N) to the Act, which allows a PHA to attach PBV assistance to units in a project in which the PHA has an ownership interest or over which the PHA has control without following a competitive process. In order to exercise this authority, the PHA must be engaged in an initiative to improve, develop, or replace a public housing property or site.

### **Content:**

- (1) PHA ownership interest. A project does not have to meet the definition of PHA-owned in order for the PHA to have an ownership interest in the project and to be covered by this HOTMA provision. An ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds *any direct or indirect interest* in the project in which the units are located, including, but not limited to, an interest as: titleholder; lessee; stockholder; member, or general or limited partner; or member of a limited liability corporation. For purposes of this authority, a PHA ownership interest also includes a scenario in which the PHA is the lessor of the ground lease for the land upon which the PBV project to improve, develop, or replace the public housing property is located or will be constructed. Units that meet the definition of “PHA-owned” as defined here qualify for this exception. Alternatively, just having an ownership interest for the purpose of this provision does not equate with meeting the definition of PHA-owned as defined in Attachment A.
- (2) Conditions for non-competitive selection. In order to be subject to this non-competitive exception, the following conditions must be met:
  - (a) The PHA must be engaged in an initiative to improve, develop, or replace the public housing properties or sites. The public housing properties or sites may be in the public housing inventory or they may have been removed from the public housing inventory through any available legal removal tool (which may include but is not limited to disposition or demolition under Section 18 of the Act, voluntary conversion under Section 22 of the Act, or required conversion under Section 33 of the Act) within 5 years<sup>2</sup> of the date on which the PHA entered into the AHAP or HAP pursuant to the non-competitive selection.
  - (b) If the PHA plans rehabilitation or new construction, a minimum threshold of \$25,000 in hard costs per-unit is required.
  - (c) If a PHA plans to replace public housing by attaching project-based assistance to existing housing in which the PHA has an ownership interest or over which the PHA has control, then the \$25,000 per-unit minimum threshold does not

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<sup>2</sup> The date on which the unit was removed from IMS/PIC serves as the start date for the 5-year window.

apply as long as the existing housing substantially complies with HUD's housing quality standards. The PHA's Administrative Plan must describe what it means to "substantially comply with HUD's housing quality standards."

- (d) The PHA must explain in its Administrative Plan the work it plans to do on the property or site and how many units of PBV it plans to add. See Administrative Plan requirements in the Appendix II to this notice.
- (3) Other PBV requirements. In order to be non-competitively selected under this provision, the units must be eligible for PBV assistance in accordance with 24 CFR §983.53, and the selection of the units must satisfy all other statutory and regulatory requirements of the PBV program. Unless otherwise exempt, units non-competitively selected under this section are subject to the program cap and income-mixing requirements and exceptions discussed in Attachment F.

## **Attachment M: Project-Basing Family Unification Program and HUD-VASH Vouchers**

**Regulation:** 24 CFR §983

**HOTMA Reference:** Sec. 106(a)(9), which added a new Sec. §8(o)(13)(O) of the Act

**Applicable Programs:** HCV and PBV

**Summary of Change:** HOTMA allows PHAs to project-base Family Unification Program (FUP) and HUD-Veterans Affairs Supportive Housing (VASH) vouchers without requiring additional HUD approval. Prior to HOTMA, PHAs were prohibited from project-basing vouchers awarded for FUP. HUD-VASH vouchers could be project-based, but required HUD review and approval in accordance with Notice PIH 2015–10 (this applied to HUD-VASH vouchers the PHA chose to project-base and not to HUD-VASH units awarded under a HUD-VASH PBV allocation as described in Attachment F of this notice). This notice supersedes Notice PIH 2015–10 in its entirety.

PHAs conduct their HUD-VASH programs in conjunction with the Veterans Affairs Medical Center (VAMC). The VAMC must make supportive services available to individuals receiving HUD-VASH assistance. Thus, when a PHA chooses to project-base its HUD-VASH vouchers, it must ensure the VAMC will continue to make supportive services available to the HUD-VASH families.

**Content:** HOTMA authorizes PHAs to project-base FUP and HUD-VASH vouchers in accordance with the statutory and regulatory requirements of the PBV program.

(1) Considerations. HUD encourages PHAs wishing to project-base FUP or HUD-VASH vouchers to include in their considerations whether the activity:

- Will yield significant benefit to participants;
- Will impact the availability of tenant-based FUP or HUD-VASH vouchers;
- Will impact voucher utilization; and

In determining whether project-basing will yield significant benefit to FUP or HUD-VASH participants, HUD encourages PHAs to consider:

- The impact on choice and access to areas of higher opportunity.
- The success of FUP and HUD-VASH participants with tenant-based vouchers.
- How project-basing will improve FUP or HUD-VASH participants' access to supportive services.

In determining the impact of project-basing on the availability of tenant-based FUP or HUD-VASH vouchers, HUD encourages PHAs to consider:

- The extent of FUP or HUD-VASH vouchers to be project-based (percent of total FUP or HUD-VASH allocation).
- Unit size. FUP youth and HUD-VASH veterans typically require a smaller unit size, while FUP families typically require a larger unit size. Unit size determination will impact the availability of budget authority to issue vouchers (i.e., a large unit may cost more than a small unit).
- The 36-month time limit on youth FUP vouchers and whether youth will be less or



more likely to request a voucher to move.

Project-basing FUP vouchers may be a part of a PHA strategy to provide supportive housing to youth and families. PHAs may leverage the project-based units with community based services and supports. Following this model would also allow a PHA to project-base additional units as a result of the service provision. (See Attachment E.)

When a PHA chooses to project-base their HUD-VASH vouchers, they must ensure they have the support of the partnering VAMC. The PHA should maintain this documentation of support for their records.

- (2) Coordinated entry and referrals. PHAs may work with their local Continuum of Care (CoC), in cooperation with their local Public Child Welfare Agency (PCWA), to prioritize entry into FUP PBV units to ensure that the units are targeted to people who most need supportive housing. For HUD-VASH, VA partners would ensure that the units are targeted to people who most need supportive housing.

For FUP, PCWAs and PHAs may accept referrals from CoCs for eligible youth in support of a community's effort to prioritize assistance in FUP PBV units. Referrals from CoCs must be signed off on by the PCWA. For HUD-VASH, all referrals come from the partnering VAMC.

- (3) Limiting FUP vouchers to one category of FUP eligible families. A PHA that chooses to project-base FUP vouchers may limit the project-based vouchers to one category of FUP eligible participants (families or youth) or a combination of the two. FUP vouchers that are limited to youth cannot exclude eligible youth with children consistent with the nondiscrimination requirements under the Fair Housing Act. For example, a PHA may project-base vouchers at a service-rich site for youth. PHAs generally do not similarly limit HUD-VASH project-based vouchers to a category of eligible participants, unless the units are specifically for elderly HUD-VASH families.



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

**Appendices**

## **Appendix I. PBV Program Cap Calculation Instructions**

This appendix provides step-by-step instructions that complement a sample *PBV Program Cap Calculation Worksheet* that may be found here: [PBV Program Cap Calculation Worksheet](#). The instructions and sample worksheet follow the same organizational structure. As applicable, the instructions reference corresponding step and line numbers of the worksheet.

Use of the worksheet is optional. PHAs may use another form to calculate and submit the program cap information to HUD.

### **Summary Table**

PHAs are advised to complete Steps 1 through 5 of the worksheet first and then review the “Summary Table.” This table contains embedded formulas that automatically calculate, among other things, the 20 percent program cap and the 10 percent program cap exception category, based on the information entered by the PHA in Steps 1 through 5. PHAs will be unable to enter information in the Summary Table.

Based on the number of units a PHA has already project-based, the number it proposes to project-base, the number of such units that are part of the exception category, and the number that are excluded entirely from the program cap, the Summary Table will show whether the PHA’s proposal will push it above the applicable program cap(s).

In cases where a PHA’s submission will place the PHA above a program cap, the Summary Table will display in red the percent available under the respective cap. For example, if a PHA proposes to project-base 11 percent of its available ACC units under the 10 percent exception category, then the 10 percent program cap field in the summary table will be highlighted in red. The PHA must then either reduce the number of exception units it proposes to project-base or, if the 20 percent cap has not been met, it may move units to the 20 percent program cap category. Likewise, if the PHA’s proposal will cause it exceed the 20 percent cap, then it may move units to the 10 percent exception category, but only if the units are eligible and there is room within the 10 percent category for additional units.

### **General Instructions for Completing Steps 1 through 5**

In the column titled “HUD Approved,” enter the total number of units currently under a PBV HAP contract, under an Agreement to Enter into a HAP contract (AHAP), and/or covered by a notice of proposal selection.

In the column titled “Proposed,” enter the number of units proposed for project-basing.

In Steps 2 through 5, enter a zero in each category that is not applicable to your agency.

A unit that qualifies under more than one exception category must be recorded in only one such category.

### **PHA Information – (lines 2-6):**

**Instruction:** Enter the PHA number in line 2 and the PHA name in line 3.

Enter the name of the person most familiar with the information on the worksheet in line 4 and that person’s email in line 5.

Enter the date the *PBV Program Cap Calculation Worksheet* is being completed in line 6.

**Step 1: Number of ACC Authorized Units (Baseline) – (line 17)**

**Instruction:** In line 17, record the number of authorized units (as described in Attachment C of this notice). This number may be found in the Inventory Management System/PIH Information Center (IMS/PIC).

As Steps 2 and 3 are completed, the number in line 17 may be reduced. This is because Steps 2 and 3 involve tabulating units that are exempt from the program cap.

**Step 2: PBV Units that Previously Received Long-Term HUD Housing Subsidies, or were Subject to a Rent Restriction as a Result of Certain HUD Loan Insurance Programs (For PBV HAP Contracts that First Became Effective on or After April 18, 2017) – (lines 20-28)**

**Instruction:** Record units that were previously subject to certain federal rent restrictions or that received another type of long-term housing subsidy provided by HUD that do not count toward the program cap when PBV assistance is attached (as described in Attachment F of this notice). Lines 20-28 of the *PBV Program Cap Calculation Worksheet* lists the categories applicable under this step. Units entered in any of the categories under this step must fully comply with the conditions described in Attachment F of this notice.

Line 29 automatically calculates the total based on the information entered in lines 20-28. PHAs will be unable to enter information in line 29.

**Step 3: Other PBV units excluded from program cap calculation – (lines 32-35)**

**Instruction:** Record other units excluded from the program cap (as described in Attachment F of this notice). There are two categories under this step: RAD units (components 1 and 2) and HUD-VASH units awarded under a HUD-VASH PBV set-aside allocation as described in Attachment F of this notice. These categories are listed in lines 32 through 34.

Line 35 automatically calculates the total based on the information entered in lines 32-34. PHAs will be unable to enter information in line 35.

**Step 4: PBV Units Categorized Under 10% Increase for Eligible Units (For PBV HAP Contracts First Executed On or After April 18, 2017) – (lines 38-41)**

**Instruction:** Record units that qualify under the 10 percent program cap exception (as described in Attachment D of this notice). Lines 38-41 of the *PBV Program Cap Calculation Worksheet* list the categories applicable under this step.

Any PBV units awarded under a HUD-VASH PBV set-aside allocation will not qualify under this step. They must instead be entered under Step 3, above. Any HUD-VASH vouchers the PHA chooses to project-base as described in Attachment M of this notice may be recorded here if they qualify for the 10 percent exception category described in Attachment D of this notice.

Line 42 automatically calculates the total based on the information entered in lines 38-41. PHAs will be unable to enter information in line 42.

Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for this 10 percent exception authority.

**Step 5: Total PBVs not Meeting an Exception (not contained in steps 2-4 above) – (lines 45-46)**

**Instruction:** In line 45, record the number of HUD-approved units that do not meet the criteria for being included under Steps 2, 3, or 4, above. In line 46, record such units that the PHA proposes to project-base.

## **Appendix II. PHA Plan, Administrative Plan, and Other PBV Topics**

This appendix addresses PHA Plan requirements, Administrative Plan requirements, and other PBV topics. It contains provisions of Notice PIH 2011–54 that are unchanged by HOTMA, provisions that are added or changed by HOTMA, and additional guidance on the PBV program that HUD is implementing via this appendix.

### **PHA Plan Requirements**

In accordance with Section 7.0 of the PHA Plan Template (see Notice PIH 2015–18 (*Availability of New and Revised Public Housing Agency (PHA) Five-Year and Annual Plan Templates and Other Forms*)) and the requirements of HOTMA, if a PHA intends to use the PBV program, it must provide the projected number of PBV units, their general locations, the work it plans to do on the property or site, how many units of PBV it is planning on adding to the site, and how project-basing is consistent with its PHA Plan. Any amendment to the PHA Plan regarding PBVs must be in accordance with 24 CFR 903.7(r)(2)(ii), which requires the PHA to identify the basic criteria for determining a significant amendment or modification to its 5-year or annual PHA Plan. When amending a PHA Plan, the agency must follow 24 CFR 903.21 which, in part, provides for adoption by the board of directors or similar governing body and public notice and comment.

### **Administrative Plan Requirements**

Listed below are those policies and procedures that must be addressed in the PHA's Administrative Plan.

- (1) Unchanged by HOTMA:
  - (a) The procedures for owner submission of PBV proposals and for selection of those proposals, such as method of providing public notice, deadline for submission and selection factors. See 24 CFR 983.51(a), (b) and (c). If the PHA intends to use both competitive and non-competitive procedures, it must describe under what conditions it will use each method of selection. It is acceptable for a PHA to state that it will only use competitive selection procedures when non-competitive selection is not applicable. However, if the PHA intends to use both competitive and non-competitive selection of proposals, the procedures above must be described in the Administrative Plan.
  - (b) The standard for deconcentrating poverty and expanding housing and economic opportunities must be described in the Administrative Plan in accordance with 24 CFR 983.57(b)(1). In addition, the PHA must establish its policy for selection of PBV sites and describe how the site selection policy promotes PBV goals.
  - (c) Applicants for PBV units must be selected from the PHA's waiting list. The PHA's Administrative Plan must describe how applicants will be selected. There are various options for a PHA in establishing PBV waiting lists. It may use separate lists for tenant-based assistance and PBV assistance or it can use one list for both. The PHA may establish separate waiting lists for different PBV projects or buildings (or for sets of such units). Different preferences may be established for each PBV waiting list. PHAs may take referrals from PBV

owners. However, all new applicants and families currently on the PHA's tenant-based waiting list must be provided with the option to have their names placed on all/any open waiting lists that the PHA maintains for assisted housing. See 24 CFR 983.251. PHAs do not have to notify each family on the tenant-based waiting list by individual notice. A PHA could notify these applicants by the same means it would use in opening its waiting list under 24 CFR §982.206(a). A non-exclusive or exhaustive list of suggestions are: (1) advertising through local and minority newspapers and the internet; (2) local postings at post offices, libraries, and community centers; and (3) an outreach to social service organizations that may serve the same clientele that will be occupying the PBV units.

- (d) Any tenant screening done by the PHA must be stated in the Administrative Plan. See 24 CFR 983.255(a).
  - (e) The PHA must have a policy in its Administrative Plan regarding family occupancy of wrong-size or accessible units. In cases where, after initial tenancy, the family is occupying a wrong-sized unit or a unit that has accessibility features not required by the family, it must describe the form(s) of continued assistance it will offer the family. See 24 CFR 983.260(b).
  - (f) At the PHA's discretion, the PBV HAP contract may provide for vacancy payments to the owner. Therefore, the PHA must decide if it will pay such vacancy payments as defined under 24 CFR 983.352. The maximum vacancy payment can be no more than two full months of monthly rent to owner under the assisted lease after the month the family moves out minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Vacancy payments can only cover the portion of time the unit remains vacant during the period defined.
- (2) Added or Changed by HOTMA:
- (a) If a PHA plans to exceed the cap on the number of units in a project that may have PBV attached for non-elderly families (i.e., the greater of 25 dwelling units or 25 percent of the dwelling units in any project), the Administrative Plan must describe the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA may not require participation as a condition of living in an excepted unit for HAP contracts executed on or after April 18, 2017. although such services may be offered. See Attachment E of this notice for more information.
  - (b) A PHA must detail its intent to add PBV units without competition to an existing HAP contract along with its rationale for adding PBVs to the specific project.
  - (c) If A PHA has insufficient funds to cover its housing assistance payments, then the PHA must take cost-saving measures prior to terminating assistance

contracts. The list of cost-saving measures is found in Notice PIH 2011–28 (“Cost-Saving Measures in the Housing Choice Voucher (HCV) Program”) or subsequent notices. If a PHA implements all of these cost-saving measures and still has insufficient funds to cover its housing assistance payments, then the PHA may choose to terminate payments under its HCV or PBV programs. A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance. A PHA may decide which type of assistance (HCV or PBV) to terminate first and must therefore identify in its Administrative Plan the factors it will take into consideration when deciding which type of assistance to terminate first. A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance and must identify in its Administrative Plan the factors it will take into consideration when deciding which type of assistance to terminate first.

- (d) A PHA that will, without following a competitive process, attach PBVs to a public housing project in which it has an ownership interest or over which it has control, must detail the work it plans to do on the public housing property or site that it is improving, developing, or replacing and must state how many units it plans to project-base at the property or site. If the PHA plans to replace public housing by attaching PBVs to existing housing in which the PHA has an ownership interest or over which the PHA has control, then the existing housing must substantially comply with HUD’s housing quality standards, and the PHA must describe in its Administrative Plan what it means to “substantially comply with HUD’s housing quality standards.”
- (e) A PHA making PBV units (not HUD-VASH) specifically available to house families that are comprised of or include a veteran under the exception category described in Attachment D of this notice must define “veteran.”

Additional administrative policies regarding HQS will be addressed in another notice.

(3) Additional PBV Guidance Implemented via this Appendix:

- (a) A PHA may adopt a policy in its FSS Action Plan that allows families that have left the FSS program without completing the FSS contract to re-enroll in the FSS program. If the PHA would like to adopt such a policy for non-FSS families that have failed to complete their supportive services requirements, then that policy must be included in the PHA’s Administrative Plan.
- (b) The PHA’s Administrative Plan must define the term “project.” See paragraph (7) of this Appendix II for more information.
- (c) The Administrative Plan must address the effective dates of the Small Area FMR designation, if applicable, and how this will apply to PBV units in accordance with 24 CFR 888.113(h).



## Other PBV Topics

- (1) Agreement to Enter into a Housing Assistance Payments (AHAP) Contract.<sup>3</sup> For any projects involving new construction or rehabilitation, an AHAP must be executed prior to the start of any construction or rehabilitation. An AHAP is not required for existing units. The requirements regarding an AHAP are detailed in 24 CFR §983.152. A PHA may not execute an AHAP until a subsidy layering review and an environmental review are completed.
- (2) Subsidy Layering Review (SLR). The purpose of an SLR is to avoid excess subsidy. See 24 CFR §983.55 and 79 Fed. Reg. 57955 (Sept. 26, 2014). SLRs are required only for projects involving new construction and rehabilitation. The *Federal Register* notice, *Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development*, issued on September 26, 2014, provides that qualified housing credit agencies (HCA) must follow certain administrative guidelines in performing subsidy layering reviews in accordance with the requirements of the Housing and Economic Recovery Act (HERA) of 2008 in those cases where the HCA elects to conduct such reviews for mixed-finance public housing projects and for newly constructed and rehabilitated structures combining other forms of government assistance with project-based voucher assistance.
- (3) Environmental Review. In accordance with 24 CFR 983.58, an environmental review is required for all PBV units including existing units. A PHA, an owner, or its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities until an environmental review is completed. Specifically, no AHAP for rehabilitated or new construction units may be executed until the environmental review is complete and no housing assistance payments (HAP) contract may be executed for existing units until the environmental review is completed.
- (4) Physical Accessibility. PBV projects must meet program accessibility requirements of 24 CFR 983.102. A PHA must ensure compliance with the accessibility requirements of Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA), as well as the design and construction requirements of the Fair Housing Act, as applicable. 24 CFR part 8 (Section 504); 24 CFR part 100 (Fair Housing Act); 28 CFR part 35 (Title II of the ADA).
- (5) Equal Opportunity and Civil Rights Requirements. A PBV program must comply with all applicable equal opportunity and nondiscrimination requirements as required by 24 CFR 983.8. The PHA must certify that it will carry out its 5-Year and Annual Plan in conformity with all applicable fair housing and civil rights laws and that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in its Assessment of Fair Housing (AFH) conducted in accordance with the requirements of 24 CFR §5.150 through §5.180, that it will take

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<sup>3</sup> This provision has been changed by HOTMA, but HUD has not yet implemented the change. The information in this section still applies until further notice.

no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs. 24 CFR 903.7(o). Under HUD's AFFH regulation, PHAs receiving assistance under Section 8 or Section 9 of the 1937 U.S. Housing Act are required to conduct and submit an AFH. 24 CFR §§5.150 et seq. See also 82 Fed. Reg. 4373 (Jan. 13, 2017).

- (6) Special Housing Types. Special housing types that are eligible to be assisted under the PBV program (i.e., single room occupancy units, congregate housing, group homes, and cooperative housing) are subject to the same inspection requirements and exceptions as any other PBV units. Of the special housing types, shared housing, manufactured home space rental, and the homeownership option are ineligible to be assisted under the PBV program. PHAs must consider requests for reasonable accommodations that may be necessary for a qualified individual with disabilities to benefit from the program (in accordance with the Fair Housing Act, Section 504 of the Rehabilitation Act, title II of the Americans with Disabilities Act and implementing regulations at 24 CFR 100.204, 24 CFR 8.33, and 28 CFR 35.130). For example, approval of a live-in aide may be necessary as a reasonable accommodation. Reasonable accommodations are determined on a case-by-case basis.
- (7) Definition of Project. The PBV statute defines project as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. This definition was unchanged by HOTMA. PHAs have discretion to define a project within the parameters of the statutory definition. That is, a PHA may define a project as a single building, or as multiple contiguous buildings, or as multiple buildings on contiguous parcels of land.

PBV HAP contracts are executed for projects based on how the PHA has defined the term in its Administrative Plan. For example, if the PHA defines "project" as a single building, then one HAP contract is executed for each building being project-based.

### Appendix III. Reporting

The content of this appendix comes from Section I of Notice PIH 2015–05. It is unchanged (with the exception of VMS reporting) and is simply included here in order to consolidate PBV guidance. Sections II and III of Notice PIH 2015–05 were changed by HOTMA and are therefore revised in the respective applicable attachments of this notice.)

Timely Reporting Requirements of the Family Report (form HUD-50058 and form HUD-50058 MTW) into the Inventory Management System/Public and Indian Housing Information Center (IMS/PIC) and Timely Submissions into the Voucher Management System (VMS) for Project-Based Vouchers.

- (1) Reporting PBV in IMS/PIC. To ensure that families occupying PBV units are recorded properly in IMS/PIC, PHAs must complete section 11 (Section 8: Project Based Certificates and Vouchers), lines 11b through 11an, as applicable, of the form HUD-50058. The remaining sections of the form HUD-50058 must be completed the same as for regular Housing Choice Voucher (HCV) participants with the following exceptions:
  - (a) Action Codes 10, Issuance of a Voucher and 11, Expiration of Voucher. Action codes 10 and 11 do not apply to the PBV program. PHAs do not need to enter action code 10 or 11 on the form HUD-50058 for participants that will occupy PBV units.
  - (b) Payment Standards. Payment standards do not apply to the PBV program.
  - (c) Portability. Since portability does not apply to the PBV program, action codes 4 (portability move-in) and 5 (portability move-out) must not be used on line 2a. Also, lines 11d through 11f must be left blank.

MTW PHAs administering PBV must complete section 21, MTW Tenant-Based or Project-Based Assistance, of the form HUD-50058 MTW. The remaining sections of the form HUD-50058 MTW must be completed as normal *except* for 21m, Flat Subsidy Amount, which does not apply to the PBV program.

- (2) Correcting the Form HUD-50058 Report when Section 12 was Incorrectly Used. In cases where a PHA has reported a PBV participant in section 12, *Housing Choice Vouchers: Tenant Based Vouchers*, of the form HUD-50058 in error, the PHA must correct the record by entering the family data in section 11 no later than the family's next recertification. Section 11 must be used for families participating in the PBV program since, under the PBV program, families never pay more than TTP (as reflected in section 11 of the 50058).

PHAs that correct an error must determine if the participant has been paying an incorrect rent amount. If so, the PHA must correct the errors starting from the time the incorrect reporting began and reimburse any amounts owed to the family.

- (3) Reporting Voucher Issuance. A family participating in the PBV program is eligible for tenant-based voucher assistance under the HCV program after the family's first year in occupancy in the PBV unit, if and when such assistance (or other comparable assistance) becomes available. When the PHA issues a family receiving PBV assistance a HCV, it must enter action code 10 on the form HUD-50058. The PHA

continues to record the participant as VO on line 1c of the form HUD-50058 and does not enter an End of Participation (EOP) entry for the participant. If the PHA cannot enter a portability move out (action code 5) on the form HUD-50058 (line 2a) for a PBV family that wants to port, the PHA should contact its PIC coach. HUD is aware that this is an issue with PBV family reports and will work with PHAs to resolve this issue until the PIC system can be modified to accept this action code for PBV families who want to port.

- (4) Timely IMS/PIC Reporting. Through Notice PIH 2011–65, HUD established the requirement of timely submission of form HUD-50058 and form HUD-50058 MTW. The Department requires that form HUD-50058 must be submitted no later than 60 calendar days from the effective date of any action recorded on line 2b.
- (5) Timely VMS Submissions. Notice PIH 2012–21 is applicable to all PHAs administering the voucher program and establishes submission requirements for the VMS. The Department uses VMS data for budget formulation, cash management, monitoring, determining renewal funding levels, and funding-related factors under the Section Eight Management Assessment Program (SEMAP). Therefore, it is imperative that PHAs comply with VMS reporting requirements and timelines, ensuring that the information submitted is both timely and accurate. The data submitted in the VMS is subject to verification and review by the PIH Office of Housing Voucher Programs Quality Assurance Division. PHAs are required to submit leasing and cost data in the VMS on a monthly basis; each month's data is submitted during the subsequent month. The VMS is available for regular submissions from the 4th through the 22nd of each month. Adjustments to previous months' reported VMS data may be entered at any time by utilizing the Prior Month Correction (PMC) module. Additional information such as how to use the system, prior month corrections, viewing data and generating reports is found in the VMS User's Manual.<sup>4</sup>

VMS data reporting is time sensitive, and requests to extend submission deadlines will not be considered. However, PHAs that are not able to meet reporting deadlines due to circumstances beyond their control must notify the FMC at [Financial\\_Management\\_Center@hud.gov](mailto:Financial_Management_Center@hud.gov). PHAs that do not submit the required data by the reporting deadline may be subject to a withholding or offset of administrative fees.

- (a) Reporting the number of PBVs under an AHAP, but not under a HAP. In this field, the PHA reports the number of PBVs under an AHAP only. These units are not reported in any other field.
- (b) Reporting the number of PBVs under a HAP and leased. In this field, the PHA reports the total number of PBVs that are under a HAP contract and leased. These units and associated expenses are also reported in the field that best describes the type of voucher being used (Tenant Protection, All Other Vouchers (AOV), etc.)

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<sup>4</sup> Click [here](#) to be taken to the online version of the VMS *User's Manual*.

- (c) Reporting the number of PBVs under a HAP contract that are not leased and not receiving vacancy payments. These vouchers are not reported in any other field, but are eligible for administrative fees.
  - (d) Reporting the number of PBVs under a HAP contract and not leased with Vacancy Payments and Associated Vacancy HAP expenses. In this field, the total number of PBVs that are under a HAP contract and are not leased, but are receiving vacancy payments. These vouchers are not reported in any other field but are eligible for administrative fees.
  - (e) Reporting HAP Expenses. Include the number of PBVs under a HAP contract and not leased with Vacancy Payments and Associated Vacancy HAP Expenses. The total HAP expense associated with PBVs under a HAP contract and not leased with vacancy payments. These expenses are also reported in the AOV HAP expense field. NOTE: RAD Rehab Assistance payments should not be reported in the field, but should be reported in the RAD 1 HAP expense field.
- (6) Non-Compliance. Pursuant to 24 CFR §982.152(d), HUD may reduce or offset any administrative fee to the PHA, in the amount determined by HUD, if the PHA fails to perform PHA administrative responsibilities correctly or adequately under the program (for example, failure to submit form HUD-50058 or to complete VMS data reporting on a timely basis or at all).

If the PHA fails to comply with reporting requirements, HUD may reduce the PHA's administrative fees. The reduction will be calculated beginning the first day of the month following the submission closing due date. The monthly reduction will continue until such time as the PHA complies with the reporting requirements or a waiver is granted. The imposition of such reductions will be communicated under separate cover and may represent a permanent reduction in funding for administrative fees for the current calendar year that shall not be reversed. However, this will not impact the baseline administrative fee calculations.

## Appendix IV. HCV, Homeownership, and PBV Inspection Requirements

- (1) Overview. HCV program inspection requirements are governed by 24 CFR Part 982, Subpart I. Most HCV inspection requirements are applicable to the PBV program and to the Homeownership Option, but there are a number of HCV inspection requirements that do not apply to either of these programs:
- Table 1 lists the HCV inspection requirements that do not apply to the PBV program. The provisions not applicable to the PBV program are found at 24 CFR §983.2(c)(4) and 24 CFR §983.101(a).
  - Table 2 lists the HCV inspection requirements that do not apply to the Homeownership Option. The provisions not applicable to the Homeownership Option are found at 24 CFR §982.641(d).

Table 1: HCV Inspection Requirements Not Applicable to the PBV Program

Regulation	HCV Provision	Reason
24 CFR §982.401(j)	Lead-based paint requirements under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R.	While 24 CFR §982.401(j) does not apply to the PBV program, lead-based paint requirements apply to the PBV requirement by virtue of 24 CFR §983.4 and 24 CFR §983.101(c).  Part 35, subparts A, B, H, and R (instead of subpart M) of the lead-based paint implementing regulations apply to the PBV program.
24 CFR §982.402(a)(3)	Entering the unit size on the voucher issued to the family.	Not applicable to the PBV program — unlike the HCV program, PBV families are not issued a Housing Choice Voucher.
24 CFR §982.402(c)	Effect of family unit size in the amount of subsidy.	Not applicable to the PBV program — unlike the HCV program, payment standards are not used to determine the amount of rent paid by a family under the PBV program.
24 CFR §982.402(d)	Size of unit occupied by the family.	Not applicable to the PBV program — unlike the HCV program, payment standards are not used to determine the amount of rent paid by a family under the PBV program.
24 CFR §982.403	Terminating the HAP contract when the unit is too small.	PBV requirements for family occupancy of wrong-size units are found at 24 CFR §983.260.

24 CFR §982.405(a)	PHA requirement for initial and periodic unit inspection.	Requirements on timing of inspections for the PBV program are found at 24 CFR §983.103.
24 CFR §982.406	Enforcement of HQS — neither the family nor any other party other than the PHA or HUD, has the right to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA for alleged failure to enforce HQS.	HQS enforcement provisions related to the PBV program are found in 24 CFR §983.101(d).

Table 2: HCV Inspection Requirements Not Applicable to the Homeownership Option

Regulation	HCV Provision	Reason
24 CFR §982.403	Terminating the HAP contract when the unit is too small.	Not applicable to the Homeownership Option — unlike the HCV program, there is no HAP contract between the PHA and the landlord under the Homeownership Option.
24 CFR §982.404	Owner and family responsibility for maintenance of the unit and PHA remedies.	Not applicable to the Homeownership Option — unlike the HCV program, the family is not under a lease but is rather the owner of the unit. Family obligations under the Homeownership Option are found at 24 CFR §982.633.
24 CFR §982.405	PHA requirement for initial and periodic unit inspection.	Not applicable to the Homeownership Option — unlike the HCV program, the PHA is not required to conduct periodic inspections after the initial inspection, although the PHA may establish a policy in its Administrative Plan that periodic inspections will be conducted.

PBV program-specific inspection requirements, which supplement the HCV inspection requirements that do apply to the PBV program, are found at 24 CFR Part 983, Subpart C. Likewise, program-specific inspection requirements specific to the Homeownership Option are found at 24 CFR §982.631(a).

See Attachment I of this notice for more information on PBV biennial inspection requirements.

- (2) PBV Pre-Selection Inspections. PHAs are required to inspect the proposed site before the selection proposal date. This requirement is applicable to all housing types (existing, new, and rehabilitated housing). Pre-selection inspection considerations include, but are not limited to, adequacy of streets and utilities, and whether the size, contour, and exposure of the property is suitable for the planned development.





**U.S. Department of Housing and Urban Development  
Public and Indian Housing**

Special Attention of:  
Directors of HUD Regional and Field  
Offices of Public Housing;  
Agencies that Administer the  
Housing Choice Voucher Program

**Notice PIH 2011-50 (HA)**

Issued: September 15, 2011

Expires: Effective until amended,  
superseded, or rescinded

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Cross References: Notices PIH 2010-23 and  
PIH 2009-11; *Implementation of the HUD-  
Veterans Affairs Supportive Housing (HUD-  
VASH) Program* published in the *Federal  
Register* on May 6, 2008

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**Subject: Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers**

**1. Purpose.** The purpose of this notice is to reinstate Notice PIH 2010-23 on the same subject with a significant revision in this section and the addition of section 2e. Section J of the *Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program* (Operating Requirements) published in the *Federal Register* on May 6, 2008, stated that the Department will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with 24 CFR part 983. This notice provides continued guidance to those PHAs that have been awarded HUD-VASH vouchers that are interested in project-basing a portion of those vouchers. Previously no more than **50 percent** of a PHA's allocation of HUD-VASH vouchers could be project-based. Please note that this limitation has been removed in order to provide PHAs with additional flexibility in administering their HUD-VASH program. However, the number of HUD-VASH project-based units must still be within the 20 percent maximum budget authority that may be allocated to project-based voucher (PBV) assistance in accordance with 24 CFR Section 983.5(a).

All types of PBV proposals will be considered: existing units, newly constructed units and substantially rehabilitated units. Proposals must be submitted to HUD Headquarters, Room 4216, Washington, DC, 20410-5000, Attention: Phyllis Smelkinson.

Requests will not be considered unless the Veteran's Affairs Medical Center (VAMC) or Community-Based Outpatient Clinic (CBOC) is in support of this project. The VAMC or CBOC must be in agreement with the PHA prior to the submission of the PBV proposal to HUD for review. When submitting these requests, they must be signed by the PHA's Executive Director (or equivalent official) and the VAMC's or Veterans Integrated Service Network's (VISN) Director and the VA Network Homeless Coordinator. The VA officials may include letters of support in lieu of signing the proposal cover letter.

The review factors in Section 2 of this notice will be considered when determining

whether to approve a request received under this notice. In addition, the impact such an approval will have on a HUD-VASH family's right to mobility will also be considered. Final decisions regarding approval of PBV proposals will be made by HUD Headquarters and the HUD-VASH Program leadership at the VA Central Office.

**2. Review Factors.** The following factors must be addressed. Please note that the PHA's obligation to review all items mandated by the PBV regulation is unaffected by the submission requirements detailed in this section.

- a. An explanation of why the PHA is proposing to project-base HUD-VASH vouchers rather than providing tenant-based assistance.
- b. A description of challenges voucher holders (and HUD-VASH voucher holders, in particular) face in the local rental market. This would include the success rate for HUD-VASH voucher holders (the number of vouchers issued that leased up within a period defined by the PHA) and the utilization rate reflected on the PHA's latest Section Eight Management Assessment Program score, or the calendar year rate, whichever is more recent.
- c. For newly constructed/substantially rehabilitated units, the length of time HUD-VASH vouchers would be shelved (not utilized) while waiting for the PBV units to be completed.
- d. A description of the proposed project including the following data:
  - i. Total number of proposed PBV units and buildings in the project;
  - ii. Poverty rate of the census tract in which the site is located;
  - iii. PHA Plan and Administrative Plan policies on deconcentrating poverty and expanding housing and economic opportunities, if applicable to the census tract's poverty rate (see 24 CFR Section 983.57(b)(1));
  - iv. Any HUD-VASH related supportive services on or near the premises of the proposed site; and
  - v. Accessibility of the proposed site to the VAMC or CBOC, transportation, and social and medical services.
- e. In regard to Section 3 below, documentation of the PHA's ability to provide HUD-VASH tenant-based or regular tenant-based vouchers (if the participant no longer needs case management) if the family wants to move from its PBV unit after 12 months. Also, HUD will consider the PHA's leasing rates in both the regular and HUD-VASH program when determining whether HUD-VASH families will be able to move from their PBV units after 12 months with or without case management.
- f. For all projects, a statement confirming that the project was selected in accordance with 24 CFR § 983.51, *Owner Proposal Selection Procedures*.

### **3. Continued Assistance for Families that Move from Project-Based Units.**

In accordance with 24 CFR Section 983.260(a) and the lease, the family may terminate the assisted lease anytime after the first year of occupancy. In 24 CFR Section 983.260(b) it is further stated that if the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance in the form of either assistance under the voucher program or other comparable tenant-based rental assistance as defined in 24 CFR Section 983.3. This section states that comparable rental assistance would be a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly income. However, in accordance with 24 CFR Section 983.260(c), **before** providing notice to terminate the lease (with a copy to the PHA), the family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance; if a voucher or other comparable tenant-based rental assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

In accordance with section g. of the Operating Requirements, as a condition of PBV rental assistance, a HUD-VASH family must receive case management services from the VAMC or CBOC; however, a VAMC or CBOC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such cases where a HUD-VASH family wishes to move from its PBV unit, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers to free up the HUD-VASH voucher for another eligible family referred by the VAMC or CBOC.

Where case management is still required, tenant-based rental assistance will be limited to jurisdictions where VAMC or CBOC case management services are available as defined in section II.f. of the Operating Requirements and any other applicable notices.

However, to ensure that all PBV units under a housing assistance payments contract remain continuously funded, the following must be implemented when a HUD-VASH family is eligible to move from its PBV unit and there is no other comparable tenant-based rental assistance to offer the family:

- a. If a HUD-VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA could require the family to wait for a HUD-VASH tenant-based voucher for a period not to exceed 180 days;
- b. If a HUD-VASH tenant-based voucher is still not available after that period of time, the family must be allowed to move with its HUD-VASH voucher and the PHA would be required to replace the assistance in the PBV unit with one of its regular vouchers unless the PHA and owner agree to remove the unit from the HAP contract;

- c. If after 180 days, a HUD-VASH tenant-based voucher does not become available and the PHA does not have sufficient available funding in its HCV program to attach assistance to the PBV unit, the family may be required to remain in its PBV unit until such funding becomes available. In determining if funding is insufficient, the PHA must take into consideration its available budget authority, which also includes unspent prior year HAP funds in the PHA's Net Restricted Assets account.

**4. Program Requirements.** All projects must be selected, developed and operated in accordance with PBV program requirements found at 24 CFR part 983, this notice and the Implementation of the HUD-VASH Program (Operating Requirements) published in the *Federal Register* on May 6, 2008, with the exception of II.c. (Initial Term of the Housing Choice Voucher) and II.d. (Initial Lease Term).

**5. Announcement of Additional PBV Awards.** The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (the Act) (Public Law 112-10) enacted April 15, 2011, provided \$50 million dollars of funding for HUD-VASH vouchers as authorized under section 8(o)(19) of the United States Housing Act of 1937. With the broad flexibility under the Act to address the needs of homeless veterans, the Department decided to fund an additional five PHAs under Notice PIH 2010-40 (*Set-Aside Funding Availability for Project-Basing HUD-VASH Vouchers*). This allowed the Department to fund those PHAs that achieved the same number of points as other selected applications, but were not originally selected through the lottery process. Those PHAs are: (1) Providence (RI) Housing Authority; (2) Tallahassee (FL) Housing Authority; and (3) Washington (DC) Housing Authority.

**5. Information Contact.** Inquiries about this letter should be directed to Phyllis Smelkinson in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 or by email at Phyllis.Smelkinson@hud.gov.

**6. Paperwork Reduction Act.** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, 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. The active information collection contained in this notice has been approved under the PRA OMB Control Number 2577-0169.

/s/

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Sandra B. Henriquez, Assistant Secretary  
for Public and Indian Housing



**U.S. Department of Housing and Urban Development  
Public and Indian Housing**

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Special Attention of:  
Directors of HUD Regional and Field  
Offices of Public Housing;  
Agencies that Administer the  
Housing Choice Voucher Program

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**Notice PIH 2009-11 (HA)**

Issued: March 16, 2009

Expires: March 31, 2010

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Cross References: Implementation of the  
HUD-Veterans Affairs Supportive Housing  
(HUD-VASH) Program published in the  
*Federal Register* on May 6, 2008

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**Subject: Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers**

**1. Purpose.** As noted in section J of the Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program (Operating Requirements) published in the *Federal Register* on May 6, 2008, the Department will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with 24 CFR part 983. The purpose of this Notice is to provide guidance to those PHAs that were awarded HUD-VASH vouchers that are interested in project-basing a portion of these vouchers. Please note that HUD and the Department of Veterans Affairs have determined that no more than **50 percent** of a PHA's allocation of HUD-VASH vouchers (rounded down) may be project-based. This number must be within the 20 percent maximum budget authority that may be allocated to project-based voucher assistance in accordance with 24 CFR Section 983.5(a). All types of project-based proposals will be considered: existing units, newly constructed units and substantially rehabilitated units. Proposals must be submitted to HUD Headquarters, Room 4210, Washington, DC, 20410-5000, Attention: Kathryn Greenspan.

Requests will not be considered unless the Veteran's Affairs Medical Center (VAMC) is in support of this project. The VAMC should be consulted by the PHA prior to the submission of the PBV proposal to HUD for review.

Please note that all sections of the Operating Requirements will apply to project-basing HUD-VASH vouchers with the exception of II.c. (Initial Term of the Housing Choice Voucher) and II.d (Initial Lease Term). With respect to the initial lease term, the term must be for at least one year for PBV units.

**2. Review Factors.** When submitting these requests, which must be jointly signed by a PHA and Veterans Affairs Medical Center (VAMC) official, the following factors must be addressed. Please note that the PHA's obligation to comply with all items mandated by the PBV regulation is unaffected by the submission requirements detailed in this section.

- a. An explanation of why the PHA is proposing to project-base HUD-VASH vouchers rather than providing tenant-based assistance.
- b. A description of challenges voucher holders (and HUD-VASH voucher holders, in particular) face in the local rental market. This would include the success rate for HUD-VASH voucher holders (the number of vouchers issued that leased up within a period defined by the PHA) and the utilization rate reflected on the PHA's latest Section Eight Management Assessment Program score or the calendar year rate whichever is more recent.
- c. For newly constructed/substantially rehabilitated units, the length of time HUD-VASH vouchers would be shelved (not utilized) while waiting for the project-based voucher units to be completed.
- d. A description of the proposed project including the following data:
  - i. Total number of proposed project-based voucher units and buildings in the project;
  - ii. Poverty rate of the census tract in which the site is located;
  - iii. A description of how selection of the proposed project is consistent with PHA Plan and Administrative Plan policies on deconcentrating poverty and expanding housing and economic opportunities.
  - iv. Any HUD-VASH related supportive services on or near the premises of the proposed site; and
  - v. Accessibility of the proposed site to the VAMC, transportation, and social and medical services.

### **3. Continued Assistance for Families that Move from Project-Based Units.**

In accordance with 24 CFR Section 983.260(a), the family may terminate the assisted lease anytime after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease. Section 983.260(b) further states that if the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance in the form of either assistance under the voucher program or other comparable tenant-based rental assistance as defined in Section 983.4.

In addition, in accordance with section g. of the Operating Requirements, as a condition of PBV rental assistance, a HUD-VASH family must receive the case management services from the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such cases where a HUD-VASH family wishes to move from its project-based assisted unit, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers to free up the HUD-VASH

voucher for another eligible family referred by the VAMC. If there is no regular voucher to offer the family, the HUD-VASH family must be allowed to keep its HUD-VASH voucher when moving to another unit.

Pursuant to the requirements above, the PHA is limited to the following options cited below when a HUD-VASH family wishes to move from the project-based assisted unit after the first year of occupancy. Please note that for HUD-VASH families that still require case management, a. and b. apply. In addition, tenant-based assistance will be limited to jurisdictions where VAMC case management services are available as defined in section II.f. of the Operating Requirements. For families that no longer require case management, c. applies.

Other than exceptions noted here, all regular PBV requirements under 24 CFR Part 983 apply.

- a. The PHA must issue the family an available HUD-VASH voucher to be used as a tenant-based voucher in which case another HUD-VASH family will occupy the project-based unit to which the HUD-VASH assistance is attached.
- b. If there are no HUD-VASH vouchers available, the family may take its HUD-VASH voucher to use as a tenant-based voucher and the PHA may attach a regular voucher, if available, to the project-based unit which must be occupied in accordance with the PHA's preferences for the unit. In this case, preferences cannot be limited to HUD-VASH voucher holders or participants.
- c. If the family no longer requires case management as determined by the VAMC, the family may be offered an available tenant-based voucher or other comparable tenant-based rental assistance. If neither is available, b. will apply.

**6. Information Contact.** Inquiries about this letter should be directed to Phyllis Smelkinson, Laure Rawson or Kathryn Greenspan in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138, 2425, or 4055, respectively.

**7. Paperwork Reduction Act.** The information collection requirements contained in this Notice is in the process of being reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, 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.

/s/

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Paula O. Blunt, General Deputy Assistant Secretary  
for Public and Indian Housing

# **ADMINISTRATIVE PLAN CHAPTER 21**



## **CHAPTER 21: PROJECT-BASED VOUCHER PROGRAM**

### **21.1 INTRODUCTION**

**[24 CFR §983.5 and §983.2]**

The Project-Based Voucher (PBV) program is administered by Public Housing Agencies (PHA's) who also administer the tenant-based Housing Choice Voucher program under an Annual Contributions Contract (ACC) with HUD. PBV is assistance that is tied directly to a unit in an approved project, unlike the Housing Choice Voucher program, where assistance is tied to the participant. HUD permits PHA's to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance. The policies regarding the Housing Choice Voucher program apply to the PBV program, except where they are specifically altered in this chapter.

In administering the Project-Based Voucher program, LACDA's goals are to:

- Attract more affordable developments to the LACDA's jurisdiction;
- Preserve affordable units that might otherwise become market-rate units;
- Increase affordability of housing for families making below 30% of the area median income;
- Further HUD and LACDA goals of deconcentration; and
- Increase housing opportunities for target populations (ex. Elderly, Disabled, Chronically Homeless, Special needs families, Transition aged youth)

The LACDA may enter into contracts for Project-Based Vouchers based on the policies outlined in this chapter.

### **21.2 LEVEL OF ASSISTANCE**

**[24 CFR §983.6; FR Notice 1/18/2017]**

The LACDA will operate a project-based voucher program using up to 20% of the authorized units for Project-Based Vouchers.

When PBV units are already selected for project-based assistance either under an agreement to enter into HAP contract or a HAP contract, the LACDA is not required to reduce the number of the units if the amount of authorized units is subsequently reduced. However, the LACDA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the LACDA has vouchers available for project-basing.

#### **21.2.1 Additional project-based units**

**[FR Notice 1/18/2017; Notice PIH 2017-21]**

As permitted, LACDA may project-base an additional 10 percent of its vouchers above the 20 percent program limit. The vouchers may be distributed among

one, all, or a combination of the categories as long as the total number of vouchers does not exceed the 10 percent cap. Vouchers under this requirement will be tied to units that qualify under this exception only if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran. A veteran means an individual that has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR §5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

**Impact on Existing Contract.** PBV units that fall into one of the four categories listed above may be covered by this 10 percent exception authority only if the units are covered under a HAP contract that was first executed on or after April 18, 2017. Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for the 10 percent exception authority.

#### **21.2.2 Units Not Subject to the PBV Program Limitation** **[FR Notice 1/18/2017; Notice PIH 2017-21]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count towards the 20 percent limitation when the PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

### **21.3 HUD NOTIFICATION OF INTENT TO PROJECT-BASE**

The LACDA must notify HUD of its intent to project-base its vouchers. The LACDA must submit to the local HUD Office the following information:

- The number of units authorized under the ACC for LACDA;
- The number of PBV units entirely excluded from the percentage limitation;
- The number of units qualifying under the 10 percent program cap exception category;
- The number of units currently committed to PBV (excluding those PBV units meeting an exception). To arrive at the “number of units committed to PBV,” total the number of units that are:
  1. Currently under PBV HAP contract;
  2. Under an Agreement to Enter into HAP contract (AHAP); and/or
  3. Covered by a notice of proposal selection (24 CFR §983.51(d)); and
- The number of units to which the LACDA is proposing to attach project-base assistance through the new Request for Proposal (RFP) or selection.

The above information must be submitted no later than 14 calendar days prior to undertaking any of the following actions:

- Issuing a request for proposal (RFP) (24 CFR §983.51(b)(1));
- Selecting a project based on a previous competition (24 CFR §983.51(b)(2));
- If applicable, selecting a project without following a competitive process (certain PHA-Owned projects).

The LACDA must await a response from HUD prior to proceeding with the proposal.

## **21.4 OWNER PROPOSAL SELECTION PROCEDURE** **[24 CFR §983.51]**

The LACDA may use one of the following methods to select owner proposals:

1. Request for Proposal (RFP): The LACDA may issue a competitive request for PBV proposals. An RFP may not be limited to a single site and may not impose restrictions that practically preclude owner submission of proposals for PBV on different sites.

The LACDA will publish an RFP in at least one newspaper of general circulation, as well as post the RFP on the LACDA's website. The submission deadline will be included in the RFP and a detailed application and selection criteria will be provided to all interested parties.

2. At the discretion of the LACDA, projects may be selected for PBV assistance using proposals for housing developed using federal, state, or local government housing assistance, community development, or a supportive services program that requires competitive selection of proposals (e.g., HOME, competitively-awarded Low-Income Housing Tax Credit, Affordable Housing Trust Funds), where the proposal has already been selected in accordance with such program's competitive selection requirements within three years of the LACDA's PBV selection date, and the earlier selection proposal did not involve any consideration that the project would receive PBV assistance.

Once a project is selected to receive PBV assistance, the LACDA will give public notice within 60 days of its selection on its website at [www.lacda.org](http://www.lacda.org).

### **21.4.1 Units Selected Non-Competitively**

#### **[FR Notice 1/18/2017 and PIH Notice 2017-21]**

Project-based assistance for Housing Authority-owned properties will not be competitively bid. To project-base Housing Authority-owned units, the LACDA must be engaged in an initiative to improve, develop, or replace a public housing property or site. The LACDA can make project-based funding available in its owned properties in response to a written request. A separate request is required per property and must include the following: name and address of the property; the total number of units; requested number of units project-based vouchers, number of vouchers requested per unit size (including square footage

for SRO's), proposed rent per unit size, population to be served, and name, title and contact information for the project liaison. An original signature from the Department Director or authorized delegate is required on the written request. E-mailed and/or faxed requests will not be accepted.

## **21.5 HOUSING ELIGIBLE FOR ASSISTANCE** **[24 CFR §983.52 AND §983.53]**

The LACDA will consider proposals for existing, newly constructed, and rehabilitated housing.

The following types of housing are ineligible under the Project-Based Voucher Program:

- Shared housing;
- Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care, except an assisted-living facility that provides home health care services such as nursing and therapy for residents of the housing;
- Units owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- Manufactured homes; and
- Transitional Housing;
- Units occupied by owners; and
- Units occupied by ineligible families.

PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

A member of a cooperative who owns shares in the project assisted under the PBV program is not to be considered an owner for purposes of participation in the PBV program.

## **21.6 CAP ON NUMBER OF PBV UNITS IN EACH PROJECT** **[24 CFR §983.56]**

The LACDA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

### **21.6.1 Exception to 25 Percent per Project Cap** **[24 CFR §983.56 and PIH Notice 2017-21]**

As of April 18, 2017, units are not counted against the 25 percent per project cap if:

- The units are exclusively for elderly families.
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project.
- If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of units in the project.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services

Projects where the caps were implemented prior to HOTMA (HAP Contracts were executed prior to 04/18/2017) must continue to use the former exceptions until the project's HAP contract under the old requirements is renewed or unless the PHA and owner agree to amend the conditions of the HAP contract. However, the LACDA will not make changes to a HAP contract if it is determined that the change would jeopardize an assisted family's eligibility for continued assistance in the project.

#### **21.6.2 Supportive Services – HOTMA**

As of 04/18/2017, the project and LACDA must make supportive services available to all families receiving PBV assistance in the project, but the families does not actually have to accept and receive supportive services for the exception to apply to the unit. It is not necessary that the supportive services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The LACDA will not require families living in excepted units to receive supportive services. Families will be offered the opportunity to enroll in either LACDA's FSS program or other Supportive Services Program offered through the project, as a condition of occupancy.

Supportive Services offered include, but are not limited to:

- LACDA's Family Self-Sufficiency (FSS) program;
- Case Management
- Mental Health Care
- Substance Use Services

- Employment and Training
- Education program where there is a reasonable expectation of leading to self-sufficiency
- Life Skills
- Physical Health Care
- Benefits Assistance
- Representative Payee
- Legal Assistance
- Child Care (if applicable)
- Adult Day Care

### **21.6.3 Pre HOTMA Projects**

Projects under HAP contract in effect prior to April 18, 2017, remain obligated by the terms of those HAP contracts with respect to the requirements that apply to the number and types of excepted units in a project, unless the owner of the project and LACDA mutually agree to change those requirements.

The LACDA and owner may agree to change such HAP contract requirements as it pertains to the exception categories of elderly families and families eligible for supportive services. The LACDA and owner must not change the terms of an existing HAP contract to add a new category of excepted unit.

The PBV contract may not be changed to conform with the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g. the excepted units at the project include units designated for families with a household member with disabilities, and changing to the HOTMA standard would result in those units no longer being eligible as excepted units unless the owner makes supportive services available to all assisted families in the project).

A HAP contract may be amended, at LACDA's discretion, to add additional PBV units in the same project. The LACDA may use this amendment process to add units where applying the new project cap definition results in more PBV units. HOTMA overrides existing regulation so that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures. All other requirements of 24 CFR §983.207(b) must be met, including not exceeding the 20 percent program cap.

### **21.6.4 Supportive Services – Pre-HOTMA Projects**

For projects using the former supportive services statutory exemption (which required that the family be receiving the supportive services) and/or the exemption for families with a household member with disabilities, the LACDA and the owner will continue to operate under the pre-HOTMA requirements and will continue to renew HAP contracts under the old requirements, unless the LACDA and the owner agree by mutual consent to change the conditions to conform with the HOTMA requirement.

#### **21.6.5 Qualifications for Supportive Services – Pre HOTMA Projects**

It is not necessary that the supportive services be provided at or by the project.

At least one member of the family must be receiving the supportive service for the unit to remain excepted from the 25% cap.

Participation in medical- or disability-related services is not required as a condition of living in an excepted unit, other than a substance use treatment program for the member of the family with the substance misuse disorder, although such services may be offered.

#### **21.6.6 Supportive Services Monitoring – Pre HOTMA Projects**

Participant compliance with a supportive service contract will be monitored at least annually. The LACDA will request a status update for the participant's supportive service contract at the anniversary of said contract. The LACDA may request a status update on the supportive service contract more frequently, at its discretion.

Providers of supportive services must provide the LACDA any changes to the program within thirty days of when those changes occur. Providers must also immediately report to the LACDA when a family fails to meet the supportive service contract requirements.

#### **21.6.7 Failure to Meet Supportive Service Requirements – Pre HOTMA Projects**

When a family living in an excepted unit fails to meet the requirements of a supportive service contract, and is living in the excepted unit because of the supportive services received, the LACDA will propose termination of the contract. The family will not be issued a voucher to move.

The owner and participant will be given a sixty-day notice of the proposed termination of the HAP contract. The owner may at that time terminate the lease and issue an order to vacate by the HAP contract termination date.

If a family fails to meet the requirements of the supportive service contract for good cause, as determined by the LACDA, and is qualified to become reinstated in the supportive service program within a reasonable time period, the LACDA may counsel the family on its obligations and allow reinstatement of the supportive service contract.

### **21.7 PROJECT SELECTION CRITERIA** **[24 CFR §983.57]**

The following criteria will be considered when evaluating proposals for Project-Based Voucher assistance:

1. Housing that serves homeless families;
2. Housing that serves disabled families or individuals;
3. Housing that serves elderly families or individuals;
4. Housing that serves families with children, consistent with the needs indicated by HACoLA's waiting list; and/or

5. Other documented needs
6. Serving very low-income families in mixed-income projects;
7. Other appropriate criteria consistent with regulation.
8. Housing that provides an appropriate level of supportive services to residents;
9. Housing that serves low- to extremely low-income families for the life of the project;
10. Other criteria consistent with regulation.

#### **21.7.1 Selection Requirements for All PBV Assisted Proposals**

Eligible projects must meet the following LACDA requirement:

If any portion of a proposed development site is within 500 feet of a freeway, the project must be designed in such a way as to exclude from this 500-foot freeway “buffer” area any portion of the residential building, as well as play areas, community rooms, gardens, patios, and other areas where residents may reasonably be expected to congregate. The LACDA shall review and approve, at its sole discretion, any site plans for developments of this type.

#### **21.7.2 Selection Requirements for All Housing Types**

A project may be selected to receive PBV assistance only if it is or will be located in a census tract that meets one of the following criteria:

- (i) A HUD-designated Enterprise Zone, Economic Community or Renewal Community;
- (ii) The concentration of assisted units will be or has decreased as a result of public housing demolition;
- (iii) Is undergoing significant revitalization;
- (iv) State, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
- (v) New market rate units are being developed that will positively impact the poverty rate in the area;
- (vi) Meaningful opportunities for educational and economic advancement exist.

Additionally, the site must be suitable in terms of furthering and facilitating all Fair Housing requirements.

The site must also meet the HQS site and neighborhood standards found in section 10.3.11 of this Plan.

#### **21.7.3 Requirements for Selecting Existing and Rehabilitated Housing** **[24 CFR §983.151]**



The LACDA will only select existing and rehabilitated housing projects that meet the following criteria:

- (1) The site is adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)
- (2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- (3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- (4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. This requirement does not apply to senior projects.

#### **21.7.4 Requirements for Selecting New Construction Housing**

The LACDA will select only new construction housing projects that meet the following criteria:

- (1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- (2) The site must not be located in an area of minority concentration, except as permitted under number (3) of this section.
- (3) A project may be located in an area of minority concentration only if:
  - (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration;
    - a. Application of this sufficient, comparable opportunities standard involves assessing the following factors:
      - i. Significant number of assisted housing units is available outside areas of minority concentration.
      - ii. There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
      - iii. There are racially integrated neighborhoods in the surrounding area.
      - iv. Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing

- units) undertaken to expand choice for minority families outside of areas of minority concentration.
- (v) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
  - (vi) The project is necessary to meet overriding housing needs that cannot be met in that housing market area.
    - 1. Application of the “overriding housing needs” criterion may permit approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”).
    - 2. An “overriding housing need,” may not serve as the basis for determining that a site is acceptable, if the basis for the decision is that discrimination related to race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.
- (4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas poverty concentration.
- (5) The neighborhood must not be seriously detrimental to family life or one in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- (6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- (7) Except for new construction housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

#### **21.7.5 PHA-owned Units**

##### **[24 CFR §983.51(e), §983.59, FR-5976-N-03 and PIH Notice 2017-21]**

A Housing Authority-owned project may be assisted under the project based program only if the independent entity reviews the selection process and determines that the Housing Authority-owned units were appropriately selected based on the selection process and determines that the Housing Authority-owned units were appropriately selected based on the selection procedures outlined in the LACDA's Administrative Plan. When the LACDA selects a proposal for housing that is owned or controlled by the LACDA, the LACDA must

identify the entity that will review the LACDA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of Housing Authority-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the LACDA and the independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing Quality Standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the LACDA's jurisdiction, or another HUD-approved public or private independent entity.

## **21.8 AGREEMENT TO ENTER INTO THE HAP CONTRACT** **[24 CFR §983.152]**

If a rehabilitated or newly constructed project, as defined by regulation, is selected by the LACDA to receive Project-Based Vouchers, the LACDA will enter into an Agreement to enter into a Housing Assistance Payment (AHAP) contract with the owner in the form required by HUD.

In the AHAP, the owner agrees to develop the contract units to comply with HQS, and the LACDA agrees that, upon timely completion of the development in accordance with the terms of the AHAP, the LACDA will enter into a HAP contract with the owner for the contract units.

The LACDA may not pay or enter into an agreement if commencement of construction or rehabilitation occurs after proposal submission. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing. Commencement of construction occurs when excavation of site preparation (including clearing of the land) begins.

Delays in completion of rehab/construction may result in termination of the agreement.

The PHA may extend the completion deadline for unforeseen factors outside of the owner's control.

The owner must obtain the PHA's approval for any changes in work. If the owner does not do so, the PHA may set a lower initial rent.

### **21.8.1 Subsidy Layering Review (SLR)** **[24 CFR §983.55]**

The LACDA may only provide assistance in accordance with HUD subsidy layering regulations and other requirements.

A subsidy layering review will not be required to enter into an agreement or to execute a contract between the LACDA and the owner when a project has not received any form of government housing assistance, other than the PBV assistance.

A subsidy layering review is required for any new construction or rehabilitation project receiving a form of government housing assistance in addition to project-based vouchers. The LACDA will not enter into an AHAP with the owner until the

project has successfully passed a subsidy layering review by HUD or other HUD-approved agency

The owner must certify in the HAP contract that the project has not received and will not receive any other form of public assistance during the life of the HAP contract other than that disclosed in the subsidy layering review.

#### **21.8.2 Environmental Review** **[24 CFR §983.58]**

The Project Based Voucher program is subject to National Environmental Policy Act environmental review pursuant to the requirements at 24 CFR Part §983.58 and 24 CFR Part 58.

If it is determined that an environmental review is required for new construction or rehabilitation projects, the LACDA will not commit any funds under PBV assistance nor enter into an AHAP with the owner until HUD approves a release of funds.

### **21.9 SELECTION OF PARTICIPANTS** **[24 CFR §983.251]**

The LACDA will only provide PBV assistance to families determined eligible, consistent with Chapter Two of this Plan.

#### **21.9.1 Waiting List**

The LACDA will use a separate waiting list for each project receiving Project-Based Voucher assistance or sets of units within a project if there are multiple eligibility restrictions for special needs populations.

If applicable, projects receiving Project-Based Voucher or Project-Based VASH assistance are required to use a Coordinated Access System to identify and refer 80 percent of its eligible applicants for the project's waiting list.

Applicants currently on the tenant-based assistance waiting list will be given an opportunity to place their name on a PBV waiting list, with their original date and time intact. If a new applicant applies to the tenant-based waiting list, the applicant will be given the opportunity to also place their name on any open PBV waiting list.

Upon admission to the PBV program, the applicants name will be removed from any other project-based voucher waiting lists that the applicant has applied for.

#### **21.9.2 Protection of In-Place Families**

Families who reside in units selected to receive PBV assistance on the proposal selection date and who are also eligible in accordance with Section 2.2 of this Plan, will be given the opportunity to place their name on the appropriate PBV site-based waiting list. An absolute preference will be given to that family to be selected from the waiting list. If the family is then determined fully eligible for the PBV program under all LACDA eligibility criteria, the family will then be referred to the owner for an appropriately-sized unit in the project.

### **21.9.3 Local Preferences**

Applicants on any PBV waiting list are subject to the system of local preferences as it pertains to that particular waiting list. PBV site-based waiting lists will have admissions preferences that reflect the target population of each project.

When PBV buildings are selected, the LACDA will publicly notice the selection, as well as the target population of each project. As new waiting lists are opened, a notice will be sent to the Housing Choice Voucher (Section 8) tenant-based waiting list identifying available site-based PBV lists and their respective admissions preferences. If a site-based waiting list is opened to the public, it will be advertised on the LACDA's website, along with its admissions preferences.

Disabled families who need an available accessible unit at a particular project may be awarded first preference from the waiting list.

Disabled families may not be required to accept the supportive services offered nor can a preference be granted for those with a particular disability.

### **21.9.4 Refusal of Assistance**

If a family refuses an offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the LACDA may remove the family from the site-based waiting list from which they were selected. Such refusal will not affect the family's position on the tenant-based waiting list or any other PBV site-based waiting list, nor affect any admissions preference for which the family qualifies.

## **21.10 INFORMATION FOR ACCEPTED FAMILIES** **[24 CFR §983.252]**

When a family accepts an offer of PBV assistance, the LACDA will provide the family an oral briefing. Attendance at this briefing is mandatory. The briefing will include:

- A description of how the program works;
- Family and owner responsibilities.

A briefing packet will be provided with information regarding:

1. How the LACDA determines total tenant payment;
2. Family obligations; and
3. Applicable fair housing information.

## **21.11 LEASING OF CONTRACT UNITS** **[24 CFR §983.253]**

Owners must lease contract units only to eligible families, selected and referred by the LACDA's from the waiting list, during the term of the HAP contract.

Owners must develop written tenant selection procedures consistent with the purpose of improving housing opportunities for very low-income families, related to program eligibility and an applicant's ability to perform lease obligations.

An owner must promptly notify, in writing, any rejected applicant of the grounds for rejection.

Owners must follow the LACDA's subsidy standards when leasing units to referred families.

**21.12 VACANCIES**  
**[24 CFR §983.254]**

The owner must promptly notify the LACDA of any current or expected vacancy in a contract unit. After owner notice, the LACDA will promptly refer a sufficient number of families to the owner to fill the vacancy.

If any contract unit has been vacant for at least 120 days since the owner notice of vacancy, the LACDA may give notice to the owner amending the HAP contract to reduce the number of contract units by the number of units that have been vacant for that period.

**21.13 TENANT SCREENING**  
**[24 CFR §983.255]**

The LACDA may take into consideration any admission criteria outlined in Chapter Two of this Plan in order to screen applicants for eligibility; however, it is the responsibility of the owner to screen applicants for behavior and suitability for tenancy.

The LACDA will provide the owner with the tenant's current and former address, as well as the name and address of the current and/or former landlord, if known. This policy is consistent with information provided to owners under the Housing Choice Voucher program.

**21.14 HOUSING ASSISTANCE PAYMENTS CONTRACT**

The LACDA must enter into a Housing Assistance Payments (HAP) contract with the owner in order to provide housing assistance payments for eligible families. The LACDA will make housing assistance payments to the owner in accordance with the HAP contract, for contract units leased and occupied by eligible families during the term of the HAP contract.

The LACDA will use the most recent HUD-approved form of the HAP contract.

**21.14.1 Execution of the HAP Contract**  
**[24 CFR §983.204, 24 CFR §983.209]**

Before the HAP contract may be executed, the LACDA will inspect each contract unit in accordance with section 21.15 of this chapter and Chapter Ten of this Plan.

For existing housing, the HAP contract must be executed within 90 days of passed inspections for all proposed units under the HAP contract.

For new construction or rehabilitated housing, the HAP contract is executed within 60 days after the LACDA has inspected the completed units and is satisfied that

said units are completed in accordance with the AHAP and the owner has furnished the required evidence of completion.

By execution of the HAP contract, the owner certifies:

- The owner is and will maintain all contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and in the leases with assisted families;
- Each contract unit is leased to an eligible family and the lease complies with the HAP contract and HUD requirements;
- Members of the assisted family reside in the contract unit and it is their only residence;
- The owner is not a relative of any member of the assisted family by blood or operation of law;
- The amount of the housing assistance payment is the correct amount due under the HAP contract;
- The rent to owner for each contract unit does not exceed the rent due to owner for any comparable, unassisted unit;
- The owner will not receive any other payments beyond the tenant rent and housing assistance payments for the contract unit; and
- The family does not own or have any interest in the contract unit.

**21.14.2      Term of the HAP Contract**  
**[24 CFR §983.205 and PIH Notice 2017-21]**

As of April 18, 2017, the LACDA may enter into a new HAP contract with an owner for an initial term of up to twenty years. The length of the initial term of the HAP contract may not be less than one year.

For any PBV HAP contract that is still within the initial term, the LACDA and owner may mutually agree to extend the contract for up to the maximum initial term of 20 years. If the HAP contract is no longer in the initial term, the LACDA will not extend the initial term.

The LACDA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

- The LACDA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;
- The determination must be made no earlier than 24 months prior to the expiration of the HAP contract.
- The term of the new extension may not exceed 20 years.

Regardless of the length of the extension, all such extensions must meet the same conditions.

The HAP contract may be terminated by the LACDA for insufficient funds. If it is determined there are insufficient funds available to continue to assist all contract units for the full term, the LACDA may give notice to the owner for all or any of the contract units, in accordance with HUD instructions.

**21.14.3      Amendments to the HAP Contract**  
**[24 CFR §983.207]**

**Amendment to Substitute Contract Units** – The LACDA may amend the HAP contract to substitute a different unit with the same number of bedrooms in the same building for the previously assisted unit. Prior to the substitution, the LACDA will inspect the proposed substitution unit and determine reasonable rent.

**Amendment to Add Contract Units** – At the discretion of the LACDA and provided the number of PBV-assisted units in a project will not exceed the 25% cap or the 20% budget authority for the PBV program, the HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV units to a building.

If there are already exception units (units in excess of the 25% cap) designated in the HAP contract, the contract may be amended during the same three year period to add additional exception units, provided that the addition does not exceed the 20% budget authority.

The anniversary and expiration date for the added units in either situation will be the same as for the existing units under the HAP contract.

**21.14.4      Termination of the HAP Contract by the LACDA**  
**[24 CFR §983.205(c) and FR Notice 1/18/2017]**

The HAP Contract provides that the term of the PHA's contractual agreement is subject to the availability of sufficient appropriated funding as determined by HUD or the PHA in accordance with HUD instruction. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that the PHA first take all cost-saving measures prior to failing to make payments under existing PBV HAP Contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP Contract, the PHA may terminate the HAP contract by notice to the owner.

As such, the LACDA will implement the HAP Contract termination in accordance with HUD instructions.

**21.14.5      Termination of the HAP Contract by the Owner**  
**[24 CFR §983.205(d)]**

If in accordance with program requirements the amount of rent to an owner for any contract is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to



LACDA. In such cases, families living in the contracted units must be offered tenant-based assistance.

**21.14.6 Statutory Notice Requirements - Contract Termination or Expiration**

**[24 CFR §983.206; FR Notice 01/18/2017; and Notice PIH 2017-21]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the LACDA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advanced notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The LACDA must provide the family with a voucher and the family must also be given the option by the LACDA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness if the gross rent exceeds the applicable payment standard. The family has a right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration of the PBV HAP contract are not new admissions to the HCV tenant-based program, and are not subject to income eligibility requirements or any other admissions requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

**21.15 HOUSING QUALITY STANDARDS (HQS) INSPECTIONS**  
**[24 CFR §983.103]**

HQS inspections will be conducted in accordance with Chapter Ten of this Plan. The LACDA may not perform inspections on units where there is a direct or indirect interest by any of its employees or officers.

The LACDA will inspect PBV units at the following times:

- Pre-selection – the LACDA will inspect the proposed site before the proposal of Existing Housing selection date. For existing units, units must substantially comply with HQS before the proposal selection date. Units must fully comply before the HAP contract may be executed;
- Pre-HAP Contract;
- Turnover – the LACDA must inspect a unit before a new family moves in. The unit must fully comply with HQS before a family may receive assistance in that unit;

- Annual – The LACDA will conduct inspections on a random sample of at least 20% of contract units in a building annually. Turnover inspections are not counted toward annual inspections.
- If more than 20% of the annual sample fails the HQS inspections, 100% of the contract units in the building must be inspected.
- Other times – the LACDA will inspect PBV units at other times as necessary to insure the contract units are in compliance with HQS and that the owner is providing utilities, maintenance and other services in accordance with the HAP contract.

**21.15.1      HQS Violation**  
**[24 CFR §983.207]**

The LACDA may make no HAP payments to the owner during any period in which the contract unit does not comply with HQS or any other HAP contract requirement.

Remedies for HQS violation include abatement or reduction in HAP payments, reduction of contract units, and termination of the HAP contract.

**21.15.2      Inspecting PHA-owned Units**  
**[24 CFR §983.103(f)]**

In the case of Housing Authority-owned units, the inspection must be performed by an independent agency designated by the LACDA and approved by HUD. The independent entity must furnish a copy of each inspection report to the LACDA and to the HUD field office where the project is located. The LACDA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the Housing Authority-owner.

**21.16 RESTRICTIONS ON RENTING TO RELATIVES**  
**[24 CFR §983.251(a)(4)]**

The LACDA will not approve a tenancy if the owner, including principal owners or other interested parties, is the parent, child, grandparent, grandchild, sister, or brother of any member of the family unless the approval is the result of a reasonable accommodation for a disabled family member.

**21.17 LEASE**  
**[24 CFR §983.256]**

Owners must use the same lease for contract units as for unassisted units, with the lease being in accordance with state law.

The lease must include the HUD tenancy addendum. All provisions in the tenancy addendum must be included in the lease. Provisions in the addendum shall prevail over provisions in the lease.

The initial term of the lease must be for at least one year.

In addition to an initial term of at least one year, the lease must provide for automatic renewal after the initial term. Automatic renewal may be in the form of:

- Renewal for successive definite terms (ex: Month to month or year to year)
- Automatic indefinite extension of the lease term

The lease must specify:

- Names of the owner and tenant;
- Identifying information of the unit rented;
- Term of the lease and any provision for renewal;
- The amount of tenant rent to owner;
- Specification of services, maintenance, equipment, and utilities to be provided by the owner;
- The amount of any charges for food, furniture, or supportive services.

#### **21.17.1      Changes in the Lease**

If the tenant and owner agree to any changes in the lease, the change must be in writing and must be submitted to the LACDA immediately.

The owner must notify the LACDA of any proposed change in the lease regarding responsibility for utilities. Such changes may only be made with approval of the LACDA. If the LACDA approves a change in responsibilities for utilities, rent reasonableness must then be re-determined. The rent to owner will be re-calculated from the effective date of the change.

#### **21.17.2      Absence from the Unit**

The LACDA's absence policies found in Chapter Six of this Plan will apply to the PBV program. The lease may specify a maximum period of family absence from the unit that is shorter than that specified by the LACDA.

The HAP contract will not be terminated if the family is absent for longer than the maximum period permitted by the LACDA.

#### **21.17.3      Owner Termination of Tenancy and Eviction**

Grounds for owner termination and eviction reflect the policies outlined in Chapter Fourteen of this Plan, except that an owner may not terminate tenancy after the initial term of the lease for business or economic reasons, or to repossess the unit for personal, family, or nonresidential use.

If an owner refuses to renew the lease without good cause, the family will be issued a tenant-based voucher and the unit will be removed from the HAP contract.

The lease terminates if the owner terminates the lease for good cause, or the owner and tenant agree to terminate the lease

Owners who wish to terminate a HAP contract by either allowing it to expire or refusing to renew it must give the LACDA and the tenants at least 1 year notice. If a proper notice is not given, the owner must allow families to remain in their units for the balance of the notice period without an increase in the tenant's portion of

rent. Under this circumstance, the owner may not evict a family due to an inability to collect an increased tenant portion of rent. An owner may renew a terminating contract for a period long enough to give tenants at least a 1 year notice.

#### **21.17.4      PHA Terminations** **[24 CFR §983.2(c)(5)]**

The LACDA may terminate a family that violates the family obligations of the PBV program. Subsequent to a proposed termination of a family's assistance, the LACDA will advise the family of its right to an informal hearing as outlined in chapter sixteen of this plan.

The LACDA is required to automatically terminate the HAP contract 180 calendar days after the last housing assistance payment is made to the owner.

- If the family still resides in the unit after the 180 day period and there is still no HAP payment on their behalf, the unit will be removed from the contract.
- If the family has resided in the unit for more than one year, they may request a tenant based voucher and attempt to find a unit for which there will be a HAP payment. No voucher will be issued to a family whose assistance has already been terminated.
- If the unit is in a fully assisted project it may be reinstated once the ineligible family vacates the unit, and in a partially assisted project, another unit may be substituted for the ineligible unit. In both cases the reinstatement/substitution must be in compliance with PBV regulations.

Additionally, the lease terminates if the LACDA terminates the HAP contract or if the LACDA terminates the family's assistance.

The termination of a family's assistance by the PHA alone does not result in an eviction. An owner must pursue eviction in local court. If the owner decides not to pursue eviction, the LACDA may elect to either substitute the ineligible unit or remove the ineligible unit from the HAP contract.

#### **21.17.5      Security Deposits** **[24 CFR §983.258]**

The owner may collect a security deposit from the tenant. The amount may not exceed that allowed by state and local law or that charged to unassisted units in the same building.

When the tenant moves out, the owner may use the amount of the deposit, in accordance with the lease and state and local law, as reimbursement for any unpaid tenant rent, damage to the unit, or any other amount the tenant owes under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the balance is not sufficient to cover amounts the tenant may owe under the lease, the owner may seek the remainder from the tenant. The LACDA has no

liability or responsibility for payment of any amount owed by the family to the owner.

**21.18 CURRENT PARTICIPANT RIGHT TO MOVE WITH TENANT-BASED ASSISTANCE**  
**[24 CFR §983.260]**

Eligible families may terminate the assisted lease at any time after the first year of occupancy. Families who wish to move must first contact the LACDA to request a voucher before submitting a lease termination notice to the owner. Once the LACDA has received a written request for a voucher, the family will be issued a new voucher. If the reexamination is current (within 12 months) the LACDA will not conduct a reexamination before issuing the voucher unless there are reported changes to income or the family composition that would require an interim reexamination. At the same time the voucher is issued, the family will receive a Request for Tenancy Approval (RTA). The family should begin looking for housing immediately in order to ensure a smooth transition to the new unit.

If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

Requests to move for families wishing to port to another jurisdiction must be submitted in writing.

If a tenant-based voucher is not available at the time of the family's request, the PHA will give the family priority to receive the next available opportunity for continued tenant-based assistance.

**21.19 FAMILY OCCUPANCY OF WRONG-SIZE OR ACCESSIBLE UNIT**  
**[24 CFR §983.260]**

If the LACDA determines that a family is occupying the wrong-size unit, or a unit with accessibility features the family does not require, and is needed by a family that requires the accessibility features, the LACDA will offer the family continued assistance in another unit and will notify the family and owner immediately of its offer of continued assistance and determination.

The LACDA may offer continued assistance either in another PBV unit or a tenant-based voucher. If appropriate, the LACDA may refer the family to an available public housing unit or other public or private tenant-based assistance (e.g. HOME).

If the family is given a tenant-based voucher, policies under the Housing Choice Voucher program regarding voucher issuance and expiration will apply. If a family fails to lease a unit with the tenant-based voucher, assistance will be terminated upon expiration of the voucher (and any subsequent extensions granted by the LACDA)

Upon determination that the family is occupying a wrong-size unit or a unit with accessibility features not required by the family and continued assistance is offered in the form of a project-based voucher, the family will have ninety days in which to move to another unit. If the family fails to move or refuses the offer of continued assistance in another unit, assistance to the family will be terminated.

**21.20 DETERMINING RENT TO OWNER****[24 CFR §983.301, 24 CFR §983.302, and 24 CFR §983.303(b)(1)]**

The amount of estimated rent to owner must be included in the Agreement for rehabilitated or newly constructed housing. The actual rent to owner must be determined at the beginning of the HAP contract term for all types of housing.

The LACDA may include as part of the HAP contract, a provision that the rent to owner will not be reduced below the initial rent. If the LACDA elects to include such a provision, the rent to owner will not be reduced below the initial rental amount during subsequent reasonable rent re-determinations. Additionally, rents will only be reduced below the initial amounts to correct errors in calculations or if additional housing assistance has been combined with the PBV assistance after the execution of the initial HAP contract and a decrease is required due to subsidy layering requirements.

The amount of rent to owner is redetermined at the owner's request for a rent increase and when there is a 10% decrease in the published FMR.

Except for certain tax credit units specified below, the amount of rent to owner must not exceed the lowest of:

- An amount determined by the PHA that does not exceed 110% of the FMR (or any exception payment standard approved by HUD), minus the utility allowance; The LACDA will cap this amount at the current payment standard in effect at the time of the determination.
- The reasonable rent; or
- The rent requested by the owner.

**21.20.1 Housing Authority – Owned Units****[24 CFR §983.301(g)]**

For Housing Authority-owned PBV units, the amount of reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the LACDA and to the HUD field office where the project is located.

Therefore, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The LACDA must use the rent to owner established by the independent entity.

**21.20.2 Redetermination of Rent to Owner****[24 CFR §983.302]**

The LACDA will only redetermine rent to the owner when the owner requests an increase at the annual anniversary of the HAP contract or when there is a 10% decrease in the published FMR. Notice of rent increase and other limitations on rent adjustments must conform to the above stated policies and section 11.3 of this Plan.

If there is a decrease in rent due to a 10% decrease in the published FMR, the rent to owner must be decreased, whether or not the owner requested a rent adjustment.

The notice of rent adjustment from the LACDA constitutes an amendment of rent to owner specified in the HAP contract.

Rent reasonableness will be determined by a HUD-approved, independent entity for units owned by the LACDA. The entity will provide a copy of the determination to the LACDA and the HUD Los Angeles field office.

The LACDA will not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with Housing Quality Standards. The owner may not receive any retroactive increase of rent for any period of noncompliance.

#### **21.20.3      Rent Determination for Projects with Other Subsidies** **[24 CFR §983.304]**

Rents may not exceed rent limits as established by the applicable federal program for units subsidized under the following programs:

1. HOME;
2. Insured or non-insured Section 236 project;
3. Formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
4. Section 221(d)(3) below market interest rate (BMIR) project;
5. Section 515 project of the Rural Housing Service;
6. Any other type of federally subsidized project specified by HUD.

The LACDA may set reasonable rents up to 110 percent of the HUD Market Rent in projects receiving Low-Income Housing Tax Credits (LIHTC), even if the rent level exceeds the maximum rent under the LIHTC program.

The LACDA may, at its discretion include provisions in the HAP contract to reduce the initial amount of rent to the owner because of other governmental subsidies.

#### **21.20.4      Rent Control and Other Rent Limitations** **[24 CFR §983.305]**

Rent control and other rent limitations under local, state or federal law will apply.

### **21.21      PAYMENT TO OWNER** **[24 CFR §983.351]**

The LACDA will make HAP payments to the owner in accordance with the HAP contract for the months in which the contracted unit is leased to and occupied by an eligible family. Except for discretionary vacancy payments described in section 21.20.1 of this chapter, the LACDA will not make any payments for any month after the month in which the family moves out of the unit. In order to continue receiving

HAP payments, the owner must comply with all provisions of the HAP contract, including HQS.

**21.21.1      Vacancy Payments**  
**[24 CFR §983.352]**

If a family moves out of a contract unit, the owner may keep the payment for the full calendar month in which the family moves out. The owner may not keep the payment if the LACDA determines that the vacancy is the owner's fault.

Subject to available funding, the LACDA may provide for vacancy payments to the owner not to exceed two months following move out. The vacancy payment may not exceed the amount of monthly rent under the assisted lease, minus any rent received by the owner, including any available amount from the tenant's security deposit.

Vacancy payments may only cover periods the unit is actually vacant.

The LACDA will only make vacancy payments to the owner if:

- The owner gives prompt, written notice to the LACDA certifying that the family vacated the unit, including the date the family moved out within 72 hours upon learning of the move out, and certifies:
  - The vacancy is not the fault of the owner and the unit was vacant during the period claimed;
  - The owner has taken every reasonable step to minimize the likelihood and length of the vacancy.

The owner must then submit a form requesting vacancy payments and provide the amount of the tenant's security deposit with any amount available to reimburse unpaid rent. The form must accompany receipts substantiating any damages the owner claims from the security deposit. The owner must certify on this form that no other payments were received for the unit during the period vacancy claimed.

**21.21.2      Other Charges and Fees**  
**[24 CFR §983.354]**

The owner may not require the family to pay charges for any meals or supportive services unless the project is an assisted living development, in which case owners may charge tenants, family members, or both for meals and supportive services. These charges may not be included in the rent to owner and may not be used to calculate rent reasonableness. Nonpayment of such charges is grounds for termination under the lease only in an assisted living development.

The owner may not charge tenants or family members extra amounts for items customarily included in the rent in Los Angeles County, or provided at no additional cost for unsubsidized tenants on the premises.



## **CFR PART 983**

**ELECTRONIC CODE OF FEDERAL REGULATIONS****e-CFR data is current as of August 4, 2017**[Title 24](#) → [Subtitle B](#) → [Chapter IX](#) → Part 983

Title 24: Housing and Urban Development

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**PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

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AUTHORITY: 42 U.S.C. 1437f and 3535(d).

SOURCE: 70 FR 59913, Oct. 13, 2005, unless otherwise noted.

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## Subpart A—General

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### §983.1 When the PBV rule (24 CFR part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

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### §983.2 When the tenant-based voucher rule (24 CFR part 982) applies.

(a) *24 CFR Part 982.* Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that do not apply to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at §982.4, see §983.3.

(b) *Types of 24 CFR part 982 provisions that do not apply to PBV.* The following types of provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) Provisions on issuance or use of a voucher;

(2) Provisions on portability;

(3) Provisions on the following special housing types: Shared housing, manufactured home space rental, and the homeownership option.

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* Except as specified in this paragraph, the following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: paragraph (b)(2) of §982.202 and paragraph (d) of §982.204;

(2) Subpart G of part 982 does not apply, with the following exceptions:

(i) Section 982.310 (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from §983.257, the provisions of §983.257 govern; and

(ii) Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from §983.256(g), the provisions of §983.256(g) govern; and

(iii) Section 982.316 (live-in aide) applies to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: §982.401(j); paragraphs (a)(3), (c), and (d) of §982.402; §982.403; §982.405(a); and §982.407;

(5) In subpart J of part 982: §982.455;

(6) Subpart K of Part 982: subpart K does not apply, except that the following provisions apply to the PBV Program:

(i) Section 982.503 (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing (§982.615 through §982.618), manufactured home space rental (§982.622 through §982.624), and the homeownership option (§982.625 through §982.641).

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 81 FR 12377, Mar. 8, 2016]

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### §983.3 PBV definitions.

(a) *Use of PBV definitions—(1) PBV terms (defined in this section).* This section defines PBV terms that are used in this part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of 24 CFR part 982. (Section 983.2 specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) *Other voucher terms (terms defined in 24 CFR 982.4).* (i) The definitions in this section apply instead of definitions of the same terms in 24 CFR 982.4.

(ii) Other voucher terms are defined in §982.4, but are not defined in this section. Those §982.4 definitions apply to use of the defined terms in this part 983 and in provisions of part 982 that apply to part 983.

(b) *PBV definitions. 1937 Act.* The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Activities of daily living.* Eating, bathing, grooming, dressing, and home management activities.

*Admission.* The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

*Agreement to enter into HAP contract (Agreement).* The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

*Assisted living facility.* A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

(1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;

(2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and

(3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

*Comparable rental assistance.* A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

*Contract units.* The housing units covered by a HAP contract.

*Covered housing provider.* For Project-Based Voucher (PBV) program, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

*Development.* Construction or rehabilitation of PBV housing after the proposal selection date.

*Excepted units* (units in a multifamily project not counted against the 25 percent per-project cap). See §983.56(b)(2) (i).

*Existing housing.* Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

*Household.* The family and any PHA-approved live-in aide.

*Housing assistance payment.* The monthly assistance payment for a PBV unit by a PHA, which includes:

(1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

(2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

*Housing credit agency.* For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986.

*Housing quality standards (HQS).* The HUD minimum quality standards for housing assisted under the program. See 24 CFR 982.401.

*Lease.* A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

*Multifamily building.* A building with five or more dwelling units (assisted or unassisted).

*Newly constructed housing.* Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

*Partially assisted project.* A project in which there are fewer contract units than residential units.

*PHA-owned unit.* A dwelling unit owned by the PHA that administers the voucher program. PHA-owned means that the PHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

*Premises.* The project in which the contract unit is located, including common areas and grounds.

*Program.* The voucher program under section 8 of the 1937 Act, including tenant-based or project-based assistance.

*Project.* A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *Contiguous* in this definition includes "adjacent to", as well as touching along a boundary or a point.

*Project-based certificate (PBC) program.* The program in which project-based assistance is attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001 (see §983.10).

*Proposal selection date.* The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

*Qualifying families* (for purpose of exception to 25 percent per-project cap). See §983.56(b)(2)(ii).

*Rehabilitated housing.* Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

*Release of funds* (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and §983.58, means that HUD approves the local PHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the PHA to execute an "agreement to enter into housing assistance payment contract" (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

*Rent to owner.* The total monthly rent payable by the family and the PHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

*Responsible entity (RE) (for environmental review).* The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

*Single-family building.* A building with no more than four dwelling units (assisted or unassisted).

*Site.* The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

*Special housing type.* Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

*Tenant-paid utilities.* Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

*Total tenant payment.* The amount described in 24 CFR 5.628.

*Utility allowance.* See 24 CFR 5.603.

*Utility reimbursement.* See 24 CFR 5.603.

*Wrong-size unit.* A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being either too large or too small compared to the guideline.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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#### **§983.4 Cross-reference to other Federal requirements.**

The following provisions apply to assistance under the PBV program.

*Civil money penalty.* Penalty for owner breach of HAP contract. See 24 CFR 30.68.

*Debarment.* Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

*Definitions.* See 24 CFR part 5, subpart D.

*Disclosure and verification of income information.* See 24 CFR part 5, subpart B.

*Environmental review.* See 24 CFR parts 50 and 58 (see also provisions on PBV environmental review at §983.58).

*Fair housing.* Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.

*Fair market rents.* See 24 CFR part 888, subpart A.

*Fraud.* See 24 CFR part 792. PHA retention of recovered funds.

*Funds.* See 24 CFR part 791. HUD allocation of voucher funds.

*Income and family payment.* See 24 CFR part 5, subpart F (especially §5.603 (definitions), §5.609 (annual income), §5.611 (adjusted income), §5.628 (total tenant payment), §5.630 (minimum rent), §5.603 (utility allowance), §5.603 (utility reimbursements), and §5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project)).

*Labor standards.* Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

*Lead-based paint.* Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856). See 24 CFR part 35, subparts A, B, H, and R.

*Lobbying restriction.* Restrictions on use of funds for lobbying. See 24 CFR 5.105(b).

*Noncitizens.* Restrictions on assistance. See 24 CFR part 5, subpart E.

*Program accessibility.* Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 24 CFR parts 8 and 9.

*Protection for victims of domestic violence, dating violence, or stalking.* See 24 CFR part 5, subpart L.

*Protection for victims of domestic violence, dating violence, sexual assault, or stalking.* See 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L.

*Relocation assistance.* Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655). See 49 CFR part 24.

*Section 3—Training, employment, and contracting opportunities in development.* Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). See 24 CFR part 135.

*Uniform financial reporting standards.* See 24 CFR part 5, subpart H.

*Waiver of HUD rules.* See 24 CFR 5.110.

[70 FR 59913, Oct. 13, 2005, as amended at 72 FR 73497, Dec. 27, 2007; 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 24, 2010; 79 FR 36165, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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### **§983.5 Description of the PBV program.**

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. In the PBV program, the assistance is “attached to the structure.” (See description of the difference between “project-based” and “tenant-based” rental assistance at 24 CFR 982.1(b).)

(2) The PHA enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing.

(3) In the case of newly constructed or rehabilitated housing, the housing is developed under an Agreement between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units.

(4) During the term of the HAP contract, the PHA makes housing assistance payments to the owner for units leased and occupied by eligible families.

(b) *How PBV is funded.* (1) If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay housing assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

(2) There is no special or additional funding for project-based vouchers. HUD does not reserve additional units for project-based vouchers and does not provide any additional funding for this purpose.



(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers, in accordance with §983.6 (d).

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

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#### **§983.6 Maximum amount of PBV assistance.**

(a) The PHA may select owner proposals to provide project-based assistance for up to 20 percent of the amount of budget authority allocated to the PHA by HUD in the PHA voucher program. PHAs are not required to reduce the number of PBV units selected under an Agreement or HAP contract if the amount of budget authority is subsequently reduced.

(b) All PBC and project-based voucher units for which the PHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for PBC or project-based voucher assistance count against the 20 percent maximum.

(c) The PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

(d) Before a PHA issues a Request for Proposals in accordance with §983.51(b)(1) or makes a selection in accordance with §983.51(b)(2), the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

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#### **§983.7 Uniform Relocation Act.**

(a) *Relocation assistance for displaced person.* (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

(2) The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided payment of relocation benefits is consistent with state and local law, PHAs may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory requirements, including the requirements of 24 CFR 982.155 and other official HUD issuances.

(b) *Real property acquisition requirements.* The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B.

(c) *Responsibility of PHA.* The PHA must require the owner to comply with the URA and 49 CFR part 24.

(d) *Definition of initiation of negotiations.* In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the Agreement between the owner and the PHA.

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#### **§983.8 Equal opportunity requirements.**

(a) The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a).

(b) The PHA must comply with the PHA Plan civil rights and affirmatively furthering fair housing certification submitted by the PHA in accordance with 24 CFR 903.7(o).

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#### **§983.9 Special housing types.**



(a) *Applicability.* (1) For applicability of rules on special housing types at 24 CFR part 982, subpart M, see §983.2.

(2) In the PBV program, the PHA may not provide assistance for shared housing, manufactured home space rental, or the homeownership option.

(b) *Group homes.* A group home may include one or more group home units. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

(c) *Cooperative housing.* (1) *Applicability of part 983.* Except as provided in paragraph (c)(3) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: §§983.256(b) and (c), 983.258 and 983.259 do not apply.

(2) *Applicability of part 982.* (i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) *Assistance in cooperative housing.* Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of 24 CFR 983 apply.

(4) *Rent to owner.* The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with §983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) *Other fees and charges.* Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

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#### **§983.10 Project-based certificate (PBC) program.**

(a) *What is it?* “PBC program” means project-based assistance attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001, and in accordance with:

(1) The regulations for the PBC program at 24 CFR part 983, codified as of May 1, 2001 and contained in 24 CFR part 983 revised as of April 1, 2002; and

(2) Section 8(d)(2) of the 1937 Act, as in effect before October 21, 1998 (the date of enactment of Title V of Public Law 105-276, the Quality Housing and Work Responsibility Act of 1998, codified at 42 U.S.C. 1437 *et seq.*).

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983, codified as of May 1, 2001, with the following exceptions:

(1) *PBC renewals.* (i) *General.* Consistent with the PBC HAP contract, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

(ii) *Renewal of PBC as PBV.* At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with §983.205.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605, 982.609 and 982.614).

(ii) *Lead-based paint requirements.* (A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBC program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, §983.206 applies to the PBC program.

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## Subpart B—Selection of PBV Owner Proposals

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### §983.51 Owner proposal selection procedures.

(a) *Procedures for selecting PBV proposals.* The PHA administrative plan must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§983.53 and 983.54), complies with the cap on the number of PBV units per project (§983.56), and meets the site selection standards (§983.57).

(b) *Selection of PBV proposals.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

(1) *PHA request for PBV Proposals.* The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

(2) *Selection based on previous competition.* The PHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

(c) *Public notice of PHA request for PBV proposals.* If the PHA will be selecting proposals under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

(d) *PHA notice of owner selection.* The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

(e) *PHA-owned units.* A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

(f) *Public review of PHA selection decision documentation.* The PHA must make documentation available for public inspection regarding the basis for the PHA selection of a PBV proposal.

(g) *Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.*

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**§983.52 Housing type.**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

(a) *Existing housing*—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection the units substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

(b) Subpart D of this part applies to newly constructed and rehabilitated housing.

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**§983.53 Prohibition of assistance for ineligible units.**

(a) *Ineligible unit.* The PHA may not attach or pay PBV assistance for units in the following types of housing:

(1) Shared housing;

(2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(5) Manufactured homes; and

(6) Transitional Housing.

(b) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

(c) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

(d) *Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP.* The PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in §983.152 after proposal submission and prior to execution of an AHAP.

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**§983.54 Prohibition of assistance for units in subsidized housing.**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

(a) A public housing dwelling unit;

(b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

(c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

(d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;

(f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);

(h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(j) A Section 101 rent supplement project (12 U.S.C. 1701s);

(k) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);

(l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

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### **§983.55 Prohibition of excess public assistance.**

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

(b) *When subsidy layering review is conducted.* The PHA may not enter into an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(c) *Owner certification.* The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

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### **§983.56 Cap on number of PBV units in each project.**

(a) *25 percent per project cap.* Except as provided in paragraph (b) of this section, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

(b) *Exception to 25 percent per building cap—(1) When PBV units are not counted against cap.* In the following cases, PBV units are not counted against the 25 percent per project cap:

(i) Units in a single-family building;

(ii) Excepted units in a multifamily project.

(2) Terms (i) "Excepted units" means units in a multifamily project that are specifically made available for qualifying families.

(ii) "Qualifying families" means:

(A) Elderly and/or disabled families; and/or

(B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have

at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under §983.262 (d), and the owner may terminate the lease in accordance with §983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

(C) The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

(3) *Combining exception categories.* Exception categories in a multifamily housing project may be combined.

(4) *Set-aside for qualifying families.* (i) In leasing units in a multifamily project pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families.

(ii) The PHA may refer only qualifying families for occupancy of excepted units.

(c) *Additional, local requirements promoting partially assisted projects.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

(1) Establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per-project cap of less than 25 percent.

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#### **§983.57 Site selection standards.**

(a) *Applicability.* The site selection requirements in paragraph (d) of this section apply only to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section apply only to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing, newly constructed housing, and rehabilitated housing.

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

(i) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

(ii) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

(iii) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

(iv) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;

(v) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

(vii) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site meets the HQS site standards at 24 CFR 982.401(l).

(c) *PHA PBV site selection policy.* (1) The PHA administrative plan must establish the PHA's policy for selection of PBV sites in accordance with this section.

(2) The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

(3) The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA administrative plan.

(d) *Existing and rehabilitated housing site and neighborhood standards.* A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

(e) *New construction site and neighborhood standards.* A site for newly constructed housing must meet the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi) of this section for further guidance on this criterion).

(iii) As used in paragraph (e)(3)(i) of this section, "sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.



(iv) Units may be considered “comparable opportunities,” as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(vi) Application of the “overriding housing needs” criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a “revitalizing area”). An “overriding housing need,” however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

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#### **§983.58 Environmental review.**

(a) *HUD environmental regulations.* Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58.

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the “responsible entity” or “RE”) is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

(2) If a PHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the review.

(c) *Existing housing.* In the case of existing housing under this part 983, the RE that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

(d) *Limitations on actions before completion of the environmental review.* (1) The PHA may not enter into an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds, as defined in §983.3(b);

(ii) The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or

(iii) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

(2) HUD will not approve the release of funds for PBV assistance under this part if the PHA, the owner, or any other party commits funds (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required).

(e) *PHA duty to supply information.* The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

(f) *Mitigating measures.* The PHA must require the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

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#### **§983.59 PHA-owned units.**

(a) *Selection of PHA-owned units.* The selection of PHA-owned units must be done in accordance with §983.51(e).

(b) *Inspection and determination of reasonable rent by independent entity.* In the case of PHA-owned units, the following program services may not be performed by the PHA, but must be performed instead by an independent entity approved by HUD.

(1) *Determination of rent to owner for the PHA-owned units.* Rent to owner for PHA-owned units is determined pursuant to §§983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on PBV program requirements;

(2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

(3) Inspection of PHA-owned units as required by §983.103(f).

(c) *Nature of independent entity.* The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

(d) *Payment to independent entity.* (1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

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### **Subpart C—Dwelling Units**

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**§983.101 Housing quality standards.**

(a) *HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to §983.2 are also inapplicable to special housing types under the PBV program.

(c) *Lead-based paint requirements.* (1) The lead-based paint requirements at §982.401(j) of this chapter do not apply to the PBV program.

(2) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(d) *HQS enforcement.* Parts 982 and 983 of this chapter do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

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**§983.102 Housing accessibility for persons with disabilities.**

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(b) *Design and construction.* Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.

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**§983.103 Inspecting units.**

(a) *Pre-selection inspection—(1) Inspection of site.* The PHA must examine the proposed site before the proposal selection date.

(2) *Inspection of existing units.* If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with the HQS.

(b) *Pre-HAP contract inspections.* The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.

(c) *Turnover inspections.* Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

(d) *Biennial inspections.* (1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this inspection requirement.

(2) If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, then the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

(e) *Other inspections.* (1) The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP

contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in 24 CFR 982.404(b).)

(3) In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

(f) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance with §983.59, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located.

(3) The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA owner.

(g) *Mixed-finance properties.* In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

[70 FR 59913, Oct. 13, 2005, as amended at 81 FR 12377, Mar. 8, 2016]

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## Subpart D—Requirements for Rehabilitated and Newly Constructed Units

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### §983.151 Applicability.

This Subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This Subpart D does not apply to PBV assistance for existing housing. Housing selected under this subpart cannot be selected as existing housing, as defined in §983.52, at a later date.

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### §983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Purpose of Agreement.* In the Agreement the owner agrees to develop the contract units to comply with the HQS, and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units.

(b) *Requirement.* The PHA must enter into an Agreement with the owner at such time as provided in §983.153. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(c) *Commencement of construction or rehabilitation.* The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

(d) *Description of housing.* (1) At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

(i) Site;

(ii) Location of contract units on site;

(iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29

U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(i)(viii) of this section.

(vii) Estimated initial rents to owner for the contract units;

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

(2) At a minimum, the housing must comply with the HQS. The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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#### **§983.153 When Agreement is executed.**

The agreement must be promptly executed, in accordance with the following conditions:

(a) *Prohibition of excess subsidy.* The PHA may not enter the Agreement with the owner until the subsidy layering review is completed (see §983.55).

(b) *Environmental approval.* The PHA may not enter the Agreement with the owner until the environmental review is completed and the PHA has received the environmental approval (see §983.58).

(c) *Prohibition on construction or rehabilitation.* The PHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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#### **§983.154 Conduct of development work.**

(a) *Development requirements.* The owner must carry out development work in accordance with the Agreement and the requirements of this section.

(b) *Labor standards.* (1) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.

(2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

(3) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

(c) *Equal opportunity.* (1) *Section 3—Training, employment, and contracting opportunities.* The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(2) *Equal employment opportunity.* The owner must comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964-1965 Comp., p. 339), 11625 (3 CFR, 1971-1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1977 Comp., p. 393).

(d) *Eligibility to participate in federal programs and activities.* The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(e) *Disclosure of conflict of interest.* The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

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**§983.155 Completion of housing.**

(a) *Completion deadline.* The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the required evidence of completion.

(b) *Required evidence of completion—(1) Minimum submission.* At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

(i) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and

(ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

(2) *Additional documentation.* At the discretion of the PHA, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion. For example, such documentation may include:

(i) A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and

(ii) An architect's certification that the housing complies with:

(A) HUD housing quality standards;

(B) State, local, or other building codes;

(C) Zoning;

(D) The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or

(E) Any additional design or quality requirements pursuant to the Agreement.

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**§983.156 PHA acceptance of completed units.**

(a) *PHA determination of completion.* When the PHA has received owner notice that the housing is completed:

(1) The PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by the PHA under the Agreement.

(2) The PHA must determine if the owner has submitted all required evidence of completion.

(3) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

(b) *Execution of HAP contract.* If the PHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

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**§983.157 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[81 FR 92639, Dec. 20, 2016]

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## Subpart E—Housing Assistance Payments Contract

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### §983.201 Applicability.

Subpart E applies to all PBV assistance under part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

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### §983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

(b) *Purpose of HAP contract.* (1) The purpose of the HAP contract is to provide housing assistance payments for eligible families.

(2) The PHA makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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### §983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

(c) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(g) The HAP contract term;

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in §983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

(i) The initial rent to owner (for the first 12 months of the HAP contract term).

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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### §983.204 When HAP contract is executed.

(a) *PHA inspection of housing.* (1) Before execution of the HAP contract, the PHA must inspect each contract unit in accordance with §983.103(b).

(2) The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the HQS.

(b) *Existing housing.* In the case of existing housing, the HAP contract must be executed promptly after PHA selection of the owner proposal and PHA inspection of the housing.

(c) *Newly constructed or rehabilitated housing.* (1) In the case of newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion (see §§983.155 and 983.156).

(2) In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement. Completion of the units by the owner and acceptance of units by the PHA is subject to the provisions of the Agreement.

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#### **§983.205 Term of HAP contract.**

(a) *15-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with §983.59.

(b) *Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59.

(c) *Termination by PHA—insufficient funding.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by the PHA in accordance with HUD instructions. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

(2) The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD instructions. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with §983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36168, June 25, 2014]

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#### **§983.206 Statutory notice requirements: Contract termination or expiration.**

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term "termination" means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

(d)(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.



[79 FR 36168, June 25, 2014]

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#### **§983.207 HAP contract amendments (to add or substitute contract units).**

(a) *Amendment to substitute contract units.* At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with §983.56(b)), or the 20 percent of authorized budget authority as provided in §983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(c) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36168, June 25, 2014]

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#### **§983.208 Condition of contract units.**

(a) *Owner maintenance and operation.* (1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

(b) *Remedies for HQS violation.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The PHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

(c) *Maintenance and replacement—Owner's standard practice.* Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36168, June 25, 2014]

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#### **§983.209 Owner responsibilities.**

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. 24 CFR 982.452 (Owner responsibilities) applies.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36168, June 25, 2014]

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#### **§983.210 Owner certification.**

By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

(a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.

(b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

(c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.

(d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

(e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.

(f) The amount of the housing assistance payment is the correct amount due under the HAP contract.

(g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

(h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.

(i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.

(j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36168, June 25, 2014]

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#### **§983.211 Removal of unit from HAP contract.**

(a) Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

(b) If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with paragraph (b) of this section, must be permissible under §983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA's selection policies.

[79 FR 36168, June 25, 2014]

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### **Subpart F—Occupancy**

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#### **§983.251 How participants are selected.**

(a) *Who may receive PBV assistance?* (1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.



(3) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

(b) *Protection of in-place families.* (1) The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (However, the PHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

(c) *Selection from PHA waiting list.* (1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) The PHA may place families referred by the PBV owner on its PBV waiting list.

(6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.

(7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (see 24 CFR 8.26 and 100.202).

(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

(1) *Preference limits.* (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

(ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and

(iii) For whom such services cannot be provided in a nonsegregated setting.

(2) Disabled residents shall not be required to accept the particular services offered at the project.

(3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

(e) *Offer of PBV assistance.* (1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.

(2) If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

(3) The PHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:

- (i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;
- (ii) Deny any admission preference for which the applicant is currently qualified;
- (iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA selection policy;
- (iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010; 79 FR 36168, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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#### **§983.252 PHA information for accepted family.**

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

- (1) A description of how the program works; and
- (2) Family and owner responsibilities.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

- (1) How the PHA determines the total tenant payment for a family;
- (2) Family obligations under the program; and
- (3) Applicable fair housing information.

(c) *Providing information for persons with disabilities.* (1) If the family head or spouse is a disabled person, the PHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats.

(2) The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

(d) *Providing information for persons with limited English proficiency.* The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

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#### **§983.253 Leasing of contract units.**

(a) *Owner selection of tenants.* (1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the PHA from the PHA waiting list.

(2) The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

(3) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(4) The owner must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(b) *Size of unit.* The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.

(c) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

[70 FR 59913, Oct. 13, 2005, as amended at 81 FR 80818, Nov. 16, 2016]

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#### **§983.254 Vacancies.**

(a) *Filling vacant units.* (1) The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the PHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies.

(2) The owner must lease vacant contract units only to eligible families on the PHA waiting list referred by the PHA.

(3) The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

(b) *Reducing number of contract units.* If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA to fill such vacancies), the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

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#### **§983.255 Tenant screening.**

(a) *PHA option.* (1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening.

(2) The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(b) *Owner responsibility.* (1) The owner is responsible for screening and selection of the family to occupy the owner's unit.

(2) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

(v) Compliance with other essential conditions of tenancy;

(c) *Providing tenant information to owner.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and any prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.

(3) The PHA must give the family a description of the PHA policy on providing information to owners.

(4) The PHA policy must provide that the PHA will give the same types of information to all owners.

(d) The protections for victims of domestic violence, dating violence, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010; 81 FR 80818, Nov. 16, 2016]

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#### **§983.256 Lease.**

(a) *Tenant's legal capacity.* The tenant must have legal capacity to enter a lease under state and local law. "Legal capacity" means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in paragraph (b)(4) of this section. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

(3) In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

(4) The PHA may review the owner's lease form to determine if the lease complies with state and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with state or local law.

(c) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

(3) The term of the lease (initial term and any provision for renewal);

(4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;

(5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and

(6) The amount of any charges for food, furniture, or supportive services.

(d) *Tenancy addendum.* (1) The tenancy addendum in the lease shall state:

(i) The program tenancy requirements (as specified in this part);

(ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.

(e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of all such changes.

(2) The owner must notify the PHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with §983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

(f) *Term of lease.* (1) The initial lease term must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease for good cause;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

(g) *Lease provisions governing absence from the unit.* The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36168, June 25, 2014]

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#### **§983.257 Owner termination of tenancy and eviction.**

(a) In general. 24 CFR 982.310 applies with the exception that §982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

(b) If a family resides in a project-based unit excepted from the 25 percent per-project cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66265, Oct. 27, 2010; 79 FR 36169, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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#### **§983.258 Continuation of housing assistance payments.**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to §983.211.

[79 FR 36169, June 25, 2014]

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#### **§983.259 Security deposit: amounts owed by tenant.**

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease.

(d) The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36169, June 25, 2014]

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#### **§983.260 Overcrowded, under-occupied, and accessible units.**

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

(1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* (1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same project or in another project);

(ii) Other project-based housing assistance (e.g., by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (e.g., under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA, and remove the unit from the HAP contract.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36169, June 25, 2014]

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#### **§983.261 Family right to move.**

(a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

(1) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(2) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the opportunity for continued tenant-based rental assistance.

(d) If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36169, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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**§983.262 When occupancy may exceed 25 percent cap on the number of PBV units in each project.**

(a) Except as provided in §983.56(b), the PHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to §983.56(a).

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

(c) If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the PHA does not exercise its discretion under paragraph (e) of this section) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with §983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36169, June 25, 2014]

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**Subpart G—Rent to Owner**

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**§983.301 Determining the rent to owner.**

(a) *Initial and redetermined rents.* (1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and §983.302.

(2) The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

(3) The rent to owner is also redetermined in accordance with §983.302.

(b) *Amount of rent to owner.* Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) *Rent to owner for certain tax credit units.* (1) This paragraph (c) applies if:



(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);

(ii) The contract unit is not located in a qualified census tract;

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

(2) In the case of a contract unit described in paragraph (c)(1) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

(3) The “tax credit rent” is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., additional assistance such as tenant-based voucher assistance).

(4) A “qualified census tract” is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) *Rent to owner for other tax credit units.* Except in the case of a tax-credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units may be determined by the PHA pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine the reasonable rent in accordance with §983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

(f) *Use of FMRs and utility allowance schedule in determining the amount of rent to owner—(1) Amounts used.* (i) *Determination of initial rent (at beginning of HAP contract term).* When determining the initial rent to owner, the PHA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

(ii) *Redetermination of rent to owner.* When redetermining the rent to owner, the PHA shall use the most recently published FMR and the PHA utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

(2) *Exception payment standard and PHA utility allowance schedule.* (i) Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program.

(ii) The PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with §983.59. The PHA must use the rent to owner established by the independent entity.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36169, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

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#### **§983.302 Redetermination of rent to owner.**

(a) The PHA must redetermine the rent to owner:



(1) Upon the owner's request; or

(2) When there is a 10 percent decrease in the published FMR.

(b) *Rent increase.* (1) The PHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to §983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

(2) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.

(3) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* (1) If there is a decrease in the rent to owner, as established in accordance with §983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(2) If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to §983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

(d) *Notice of rent redetermination.* Rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§983.301 and 983.302). The PHA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

(3) See §983.207(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36170, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

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### **§983.303 Reasonable rent.**

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except that where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with §983.302(e)(2).

(b) *Redetermination.* The PHA must redetermine the reasonable rent:

(1) Whenever there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 year before the contract anniversary.

(2) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and

(4) Whenever there is any other change that may substantially affect the reasonable rent.

(c) *How to determine reasonable rent.* (1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

- (i) The location, quality, size, unit type, and age of the contract unit; and
- (ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) *Comparability analysis.* (1) For each unit, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) *Owner certification of comparability.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with §983.59, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36170, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

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#### **§983.304 Other subsidy: effect on rent to owner.**

(a) *General.* In addition to the rent limits established in accordance with §983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

(b) *HOME.* For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

- (i) An insured or non-insured Section 236 project;
- (ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- (iii) A Section 221(d)(3) below market interest rate (BMIR) project;
- (iv) A Section 515 project of the Rural Housing Service;
- (v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

(d) *Combining subsidy.* Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See §983.55.

(e) *Other subsidy: rent reduction.* To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

(f) *Prohibition of other subsidy.* For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see §983.54.

[70 FR 59913, Oct. 13, 2005, as amended at 72 FR 65207, Nov. 19, 2007; 79 FR 36170, June 25, 2014]

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**§983.305 Rent to owner: effect of rent control and other rent limits.**

In addition to the limitation to 110 percent of the FMR in §983.301(b)(1), the rent reasonableness limit under §§983.301(b)(2) and 983.303, the rental determination provisions of §983.301(f), the special limitations for tax credit units under §983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

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**Subpart H—Payment to Owner**

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**§983.351 PHA payment to owner for occupied unit.**

(a) *When payments are made.* (1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with §983.352, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) *Calculating amount of payment.* The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) *Prompt payment.* The housing assistance payment by the PHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

(e) *Owner compliance with contract.* To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

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**§983.352 Vacancy payment.**

(a) *Payment for move-out month.* If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

(b) *Vacancy payment at PHA discretion.* (1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (b)(2) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

(2) The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

(3) The PHA may make vacancy payments to the owner only if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);

(ii) The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

(4) The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

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**§983.353 Tenant rent; payment to owner.**

(a) *PHA determination.* (1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.* (1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

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**§983.354 Other fees and charges.**

(a) *Meals and supportive services.* (1) Except as provided in paragraph (a)(2) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(2) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

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[Need assistance?](#)

## **FEDERAL REGISTER DOCUMENTS ON PBV/PBVASH**

\* \* \* \* \*

Dated: July 10, 2017.

**Chuck Rosenberg,**  
Acting Administrator.

[FR Doc. 2017-14878 Filed 7-13-17; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT****24 CFR Parts 982 and 983****[Docket No. FR-5976-C-06]****Housing Opportunity Through  
Modernization Act of 2016:  
Implementation of Various Section 8  
Voucher Provisions; Correction****AGENCY:** Office of the Assistant  
Secretary for Public and Indian  
Housing, HUD.**ACTION:** Implementation and request for  
comments; correction.**SUMMARY:** On January 18, 2017, HUD  
published a document in the **Federal  
Register** making several Housing Choice  
Voucher (HCV) provisions of the  
Housing Opportunity Through  
Modernization Act of 2016 (HOTMA)  
effective and requesting comment. This  
document makes technical corrections  
to the January 18, 2017, document.**DATES:** *Effective date:* The effective date  
for the implementation guidance of  
April 18, 2017 is unchanged.**FOR FURTHER INFORMATION CONTACT:**  
With respect to this supplementary  
document, contact Ariel Pereira,  
Associate General Counsel for  
Legislation and Regulations, Department  
of Housing and Urban Development,  
451 7th Street SW., Room 10238,  
Washington, DC 20410; telephone  
number 202-708-1793 (this is not a toll-  
free number). Persons with hearing or  
speech impairments may access this  
number through TTY by calling the toll-  
free Federal Relay Service at 800-877-  
8339.Please direct all questions about the  
January 18, 2017 document to  
[HOTMAquestionsPIH@hud.gov](mailto:HOTMAquestionsPIH@hud.gov).**SUPPLEMENTARY INFORMATION****I. Background Information**

On July 29, 2016, HOTMA was signed into law (Pub. L. 114-201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and

which statutory changes required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

On January 18, 2017, HUD published a second document at 82 FR 5458, making multiple HOTMA provisions impacting the HCV program effective and requesting comments. Several of the comments pointed out the need for technical corrections or clarifications to the January 18, 2017, implementation document. This document makes several technical corrections and clarifications to the January 18, 2017, implementation document, in part based on the public comments. HUD also received comments recommending changes that were not technical corrections or clarifications, but rather suggested alternative approaches to implementing the HOTMA provisions. HUD will take those comments under consideration.

**II. Explanation of Corrections***A. Units Owned by a PHA (HOTMA § 105)—Controlling Interest*

HOTMA amended section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding the regulatory definitions at 24 CFR 983.3 and 24 CFR 982.352. HOTMA establishes three categories under which a project is PHA-owned. A project is PHA-owned when the project is: (1) Owned by the PHA; (2) owned by an entity wholly controlled by the PHA; or (3) owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner. The January 18, 2017, implementation document (page 5463, section B), used the phrase “50 percent or more” to define a level of control that constitutes a controlling interest and would thus indicate PHA ownership. The threshold for control should be “more than 50 percent” rather than “50 percent or more.”

This document also corrects a typographical error contained in the January 18, 2017, implementation document in the definition of “controlling interest” for purposes of establishing PHA ownership. Specifically, the implementation document incorrectly refers to equivalent levels of control in other “organizational” structures. This document corrects the definition to refer to “ownership” structures.

*B. Units Not Subject to Project-Based Voucher (PBV) Program Unit Limitation (HOTMA § 106(a)(2)) and Projects Not Subject to Project Cap (HOTMA § 106(a)(3))—Flexible Subsidy Projects*

HOTMA amended the 1937 Act to except certain units from both the PHA program unit percentage limitation at section 8(o)(13)(B) and the income-mixing requirement at section 8(o)(13)(D). Specifically, HOTMA excepts units of project-based assistance that “are attached to units previously subject to federally required rent restrictions or receiving another type of long-term subsidy or project-based assistance provided by the Secretary.” The January 18, 2017, implementation document (page 5465, section C.2.C, and page 5467, section C.3.D, respectively) inadvertently excluded from the list of excepted units those units that have received assistance under section 201 of the Housing and Community Development Amendments of 1978. Therefore, HUD is correcting the January 18, 2017, implementation document to add the Flexible Subsidy Program in both lists.

*C. Units Not Subject to PBV Program Unit Limitation (HOTMA § 106(a)(2))—Replacement Housing*

In discussing the units that are not subject to the PBV program unit limitation, the January 18, 2017, implementation document describes the circumstances under which PBV new construction units will qualify as replacement housing for the covered units and likewise are exempt from the program limitation (page 5465, section C.2.C(2)). One of the requirements is that the newly constructed unit is located on the same site as the unit it is replacing. In describing this requirement, the January 18 2017, implementation document inadvertently referred to the “site of the original public housing development” instead of “site of the original development.” To avoid any indication that this requirement is only applicable to former public housing units as opposed to all the covered forms of HUD assistance listed earlier in the January 18, 2017, implementation document, C.2.C(2)(b) is revised to strike “public housing” from the paragraph.

*D. Changes to Income-Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Supportive Services Exception*

HOTMA amends the 1937 Act with respect to the threshold for exemption from the income-mixing requirement. The income mixing requirement

exception for supportive services now applies to dwelling units assisted under the contract that are exclusively made available to “households eligible for supportive services that are made available to the assisted residents of the project, according to the standards for such services the Secretary may establish.” HOTMA requires that families must be “eligible” for the supportive services, rather than “receiving” the supportive services, for the units made available to such families to be excluded from the income-mixing requirement. As clarified in the January 18, 2017, implementation document (page 5467, section C.3.B(2)), this HOTMA change means that a PHA may not require family participation in the supportive services as a condition of living in an excepted unit. Therefore, a PHA may not rely solely on a supportive services program that would require a family to engage in the supportive services once the family enrolls in the program, such as Family Self-Sufficiency (FSS), for the unit to meet the supportive services exception.

The January 18, 2017, implementation document states that “if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit . . . and the PHA shall cease paying housing assistance payments on behalf of the ineligible family.” Upon further consideration, HUD is concerned that the sentence may be misinterpreted to imply that a PHA could, under HOTMA, establish a supportive services exception based exclusively on participation in FSS (where participation in the supportive services is required as opposed to voluntary), rather than in combination with another supportive services option where participation in the supportive services is voluntary. Additionally, HUD has determined that this provision could be wrongly construed in a way that conflicts with current FSS requirements, which do not allow termination from the housing assistance program for failure to complete the FSS contract of participation. See the **Federal Register** notice entitled, “Waivers and Alternative Requirements for the Family Self-Sufficiency Program”, published on December 29, 2014, at 79 FR 78100.

Therefore, HUD is correcting the language on page 5467 to remove the ambiguities and better express the requirements of the HOTMA changes.

*E. Changes to Income-Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Units in Low-Poverty Census Tract Exception*

HOTMA amended the 1937 Act with respect to the types of units that are exempt from the income-mixing requirement. The January 18, 2017, implementation document (page 5467, section C.3.B(3)), noted that “projects that are in a census tract with a poverty rate of 20 percent or less” are excluded from the cap. However, the January 18, 2017, implementation document should have clarified that while PBV projects located in a census tract with a poverty rate of 20 percent or less are excluded from the 25 percent unit cap, those projects are subject to an alternative income mixing requirement that is the greater of 25 units or 40 percent of the units. HUD is adding a sentence to this section as a clarification.

*F. Changes to Income Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Grandfathering of Certain Properties*

There are two typographical errors in the last sentence of section C.3.C on page 5467. The word “contact” should be “contract” and the last word of the sentence should be “project” and not “unit”.

*G. Projects Not Subject to a Project Cap (HOTMA § 106(a)(3))—Replacement Housing*

HOTMA amended the language in section 8(o)(13)(D) to exempt certain types of units receiving PBV assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. The January 18, 2017, implementation document (page 5468, section C.3.D(2)), provided an incorrect definition of new construction units that qualify for the exception as replacement housing. The definition in section C.3.D(2)(b) was supposed to match the definition provided on page 5465, section C.2.C(2)(b).

*H. Attaching PBVs to Structures Owned by PHAs (HOTMA § 106(a)(9))*

HOTMA amended the 1937 Act to add a new section 8(o)(13)(N), which allows a PHA that is engaged in an initiative to improve, develop, or replace a public housing property or site to attach PBVs to projects in which the PHA has an ownership or controlling interest, without following a competitive process. In the January 18, 2017, implementation document (page 5471, section C.6), HUD stated that, in

order to avail itself of this exemption from the competitive award of PBVs, a PHA must “be planning rehabilitation or construction on the project with a minimum of \$25,000 per unit in hard costs.” However, this minimum per unit cost would not be applicable in a situation where a PHA is replacing a public housing property or site with existing housing owned or controlled by the PHA.

Accordingly, in FR Doc. 2017–0091, beginning on page 5458 of the **Federal Register** of Wednesday, January 18, 2017, the following corrections are made:

1. On page 5463, in the first column, the final sentence of paragraph (3) is corrected to read as follows:

- A “controlling interest” is—
- (A) holding more than 50 percent of the stock of any corporation;
  - (B) having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
  - (C) where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
  - (D) holding more than 50 percent of all managing member interests in an LLC;
  - (E) holding more than 50 percent of all general partner interests in a partnership; or
  - (F) equivalent levels of control in other ownership structures.

2. On page 5465, beginning in the first column, paragraph C(1)(b)(i) is corrected by adding at the end a new paragraph, to read as follows:

(VII) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

3. On page 5465, beginning in the second column, paragraph (b) is corrected by removing “public housing” in the second sentence.

4. On page 5467, in the second column, the last two paragraphs of paragraph B(2) are corrected to read as follows:

A PHA may not require participation in the supportive services as a condition of living in an excepted unit, although the family must be eligible to receive the supportive services, and the supportive services must be offered to the family. As such, a PHA may not rely solely on a supportive services program that would require the family to engage in the services once enrolled, such as FSS, for the unit to qualify for the supportive services exception. In the case of a family that chooses to participate in the supportive services, as described by the PHA in the administrative plan, and successfully completes the supportive services objective, the unit continues to be an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.



However, if a family becomes ineligible for the supportive services during their tenancy (for reasons other than successfully completing the supportive services objective), the unit will no longer be considered an excepted unit under this category. If the PHA does not want to reduce the number of excepted units in their project-based portfolio, the PHA may: (i) Substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with 24 CFR 983.207(a), so that the unit does not lose its excepted status, or (ii) temporarily remove the unit from the PBV HAP contract and provide the family with tenant-based assistance. Note that the family would have to be ineligible for *all* the supportive services made available for the unit to lose its excepted status. For example, consider a project where the supportive services made available to assisted families in the project include both FSS supportive services (for families that voluntarily join the FSS program) and non-FSS supportive services (where, unlike FSS, participation in supportive services is not mandatory). If a family joined the FSS program but later dropped out of the FSS program, the unit would continue to be an exception unit provided the family is eligible for the non-FSS supportive services.

5. On page 5467, in the second column, paragraph B(3) is corrected by adding a new sentence at the end, to read as follows:

“For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project.”

6. On page 5467, in the third column, the last sentence of paragraph (C) is corrected to read as follows:

The PBV HAP contract may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g., excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the project.

7. On page 5467, beginning in the third column, paragraph D(1)(b)(i) is corrected by adding at the end a new paragraph, to read as follows:

(VII) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

8. On page 5468, in the second column, the second sentence of paragraph (b) is corrected by removing the parentheses and correcting it to read as follows:

An expansion of or modification to the prior project's site boundaries as a result of the design of the new construction project is acceptable as long as a majority of the replacement units are built back on the site of the original development and any units that are not built on the existing site share

a common border with, are across a public right of way from, or touch that site.

9. On page 5471, in the third column, the second paragraph of section 6 is corrected to read as follows:

In order to be subject to this non-competitive exception, the PHA must be planning: (A) rehabilitation or construction of the project or site with a minimum of \$25,000 per unit in hard costs; or (B) replacement of the project or site with existing housing that substantially complies with HUD's housing quality standards. The PHA must detail in its administrative plan how it intends to use PBVs to improve, develop, or replace any public housing property or site, and, if applicable, must detail what works it plans to do on the property or site and how many units of PBV it is planning an adding to the site.

Dated: June 28, 2017.

**Jemine A. Bryon,**

*General Deputy Assistant, Secretary for Public and Indian Housing.*

[FR Doc. 2017-14631 Filed 7-13-17; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 982 and 983

[Docket No. FR-5976-N-03]

#### Housing Opportunity Through Modernization Act of 2016; Implementation of Various Section 8 Voucher Provisions

##### Correction

Rule document 17-00911 was inadvertently published in the Proposed Rules section of the issue of Wednesday, January 18, 2017, beginning on page 5458. It should have appeared in the Rules section.

[FR Doc. C1-2017-00911 Filed 7-13-17; 8:45 am]

**BILLING CODE 1505-01-D**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4022

#### Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in August 2017. The interest assumptions

are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective August 1, 2017.

#### FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy ([Murphy.Deborah@pbgc.gov](mailto:Murphy.Deborah@pbgc.gov)), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400 ext. 3451.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (<http://www.pbgc.gov>). PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for August 2017.<sup>1</sup>

The August 2017 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for July 2017, these assumptions represent a decrease of 0.25 percent in the immediate rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public

<sup>1</sup> Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.



**(a) Comments Due Date**

We must receive comments by March 6, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to GROB Aircraft AG Models GROB G 109 and GROB G 109B gliders, all serial numbers, certificated in any category.

**(d) Subject**

Air Transport Association of America (ATA) Code 32: Landing Gear.

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as broken pivots of the tail wheel mounting bracket resulting from corrosion and damage due to wear. We are issuing this proposed AD to detect and correct if necessary any corrosion or damage to the tail wheel mounting bracket, which could cause loss of rudder control and result in reduced control.

**(f) Actions and Compliance**

Unless already done, do the following actions:

(1) Within the next 3 months after the effective date of this AD or 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed every 100 hours TIS or 12 months, whichever occurs first, inspect the tail wheel mounting bracket following the Accomplishment Instructions in section 1.8 of GROB Aircraft AG Service Bulletin (SB) No. MSB817-70, dated September 28, 2016.

(2) If any damage is found during any inspection required in paragraph (f)(1) of this AD, before further flight, repair following GROB Aircraft AG Repair Instruction RI 817-015, dated September 16, 2016.

**Note 1 to paragraph (f)(2) of this AD:** The bolt in Figure 1, Pos. 10 of GROB Aircraft AG Repair Instruction RI 817-015, dated September 16, 2016, is welded into place onto the steel base plate. Therefore, in order to facilitate the removal of the bolt, the welding seams may be carefully ground off using caution to not damage the steel base plate, instead of completely cutting off the bolt head.

(3) Repairs made as required by paragraph (f)(2) of this AD do not qualify as terminating action for the repetitive inspections required in paragraph (f)(1) of this AD.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust,

Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4165; fax: (816) 329-4090; email: [jim.rutherford@faa.gov](mailto:jim.rutherford@faa.gov). Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(h) Related Information**

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016-0228, dated November 14, 2016, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0019. For service information related to this AD, contact GROB Aircraft AG, Product Support, Lettenbachstrasse 9, D-86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268-998-105; fax: + 49 (0) 8268-998-200; email: [productsupport@grob-aircraft.com](mailto:productsupport@grob-aircraft.com); Internet: [grob-aircraft.com](http://grob-aircraft.com). You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on January 6, 2017.

**Melvin Johnson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 982 and 983

[Docket No. FR-5976-N-03]

### Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Implementation and request for comment.

**SUMMARY:** On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Several of the statutory amendments made by HOTMA affect the Project-Based Voucher (PBV) program or the Housing Choice Voucher (HCV) program. HOTMA also gave HUD the authority to implement many of

those changes by notice, and those statutory changes are not effective until HUD issues that notice. This document serves as the implementation notice for several of the provisions of HOTMA that impact the HCV and PBV programs, and seeks additional public input on both the implementing requirements in this document and future changes to these programs.

**DATES:** *Effective date:* April 18, 2017.

*Comment due date:* March 20, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this document. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*No Facsimile Comments.* Facsimile (fax) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**  
Please direct all questions about this notice to [HOTMAquestionsPIH@hud.gov](mailto:HOTMAquestionsPIH@hud.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 29, 2016, President Obama signed HOTMA into law (Public Law 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and which required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

This document implements new statutory provisions regarding certain inspection requirements for both HCV tenant-based and PBV assistance (found in § 101(a)(1) of HOTMA), the definition of PHA-owned housing (§ 105 of HOTMA), and changes to the PBV program at large (§ 106 of HOTMA) by providing the additional information needed for PHAs and owners to use those provisions. The document also implements and provides guidance on the statutory change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§ 112 of HOTMA).

While this document makes the provisions below effective, HUD seeks further public comment on the implementation of these provisions. Below each section describing the implementation of a statutory provision, HUD has included specific questions for public comment. All comments must be submitted using the two methods detailed above.

**II. Implementation Information**

*A. Inspections of Dwelling Units (HOTMA § 101(a)(1))*

Section 101(a)(1) of HOTMA adds a modified subparagraph (A) to section 8(o)(8) of the 1937 Act (42 U.S.C. 1437f(o)(8)). The amended subparagraph continues the requirement of inspections of dwelling units assisted under section 8(o) of the 1937 Act to determine that the units meet housing quality standards (HQS) prior to the PHA making a housing assistance payment. However, new language provides an exception to this requirement, allowing the PHA to

approve the assisted tenancy and commence housing assistance payments if the unit fails the inspection but only has non-life-threatening HQS deficiencies. If a PHA makes payments under that exception, the PHA must withhold any assistance payments if the non-life-threatening deficiencies are not remedied within no more than 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS.

In addition, new language authorizes occupancy of a unit prior to the inspection being completed if the unit had, in the previous 24 months, passed an alternative inspection method under section 8(o)(8)(E). The PHA must inspect the unit within 15 days of receiving the Request for Tenancy Approval. Once the unit passes the HQS, the PHA may make assistance payments retroactively, dating back to the beginning of the assisted lease term, which is the effective date of the HAP contract. Per 24 CFR 982.309(b), the term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

This document does not implement other provisions in section 101(a) of HOTMA.

**1. Occupancy Prior to Meeting HQS (§ 8(o)(8)(A)(ii) of 1937 Act)**

As a result of the HOTMA amendments to Section 8(o)(8)(A)(ii) of the 1937 Act, PHAs may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions, as such conditions are defined by HUD. In exercising this administrative flexibility under § 8(o)(8)(A)(ii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If the PHA exercises this authority, this document overrides the requirement at 982.305(a)(2) and (b)(i) that the PHA has determined that the unit *meets* HQS before approval of the tenancy and beginning of the initial lease term. (The PHA must still conduct the HQS inspection prior to approval of the tenancy and the beginning of the initial lease term in accordance with those regulations.)

**A. HUD Definition of Non-Life-Threatening and Life-Threatening Conditions**

For the purposes of implementing § 8(o)(8)(A)(ii), HUD is defining a non-life-threatening condition as any

condition that would fail to meet the housing quality standards under 24 CFR 982.401 and is not a life-threatening condition. Further, for the purposes of this implementation notice, HUD is defining life-threatening conditions as follows:

(1) Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following: (a) A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or (b) a strong gas odor detected with potential for explosion or fire, or that results in health risk if inhaled.

(2) Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following: (a) A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed; (b) a light fixture is hanging by its wires; (c) a light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit; (d) a receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed; (e) a receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed; (f) an open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses; (g) a cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections; (h) any nicks, abrasions, or fraying of the insulation that expose conducting wire; (i) exposed bare wires or electrical connections; (j) any condition that results in openings in electrical panels or electrical control device enclosures; (k) water leaking or ponding near any electrical device; or (l) any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.

(3) Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following: (a) the smoke detector is missing; or (b) the smoke detector does not function as it should.

(4) Interior air quality. A life-threatening condition under this standard is one of the following: (a) the carbon monoxide detector is missing; or (b) the carbon monoxide detector does not function as it should.

(5) Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-

threatening condition under this standard is one of the following: (a) The chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases; (b) a gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside; (c) a fuel fired space heater is not properly vented or lacks available combustion air; (d) a non-vented space heater is present; (e) safety devices on a fuel fired space heater are missing or damaged; or (f) the chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.

(6) Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following: (a) Any of the components that affect the function of the fire escape are missing or damaged; (b) stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or (c) the building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.

(7) Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.

(8) Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.

(9) Any other condition subsequently identified by HUD as life threatening in a notice published in the **Federal Register**. HUD will notify PHAs if such changes are made.

(10) Any other condition identified by the administering PHA as life-threatening in the PHA's administrative plan prior to this notice taking effect.

#### B. Administrative Plans

Before implementing § 8(o)(8)(A)(ii), PHAs must amend their HCV administrative plans to include HUD's definition of non-life-threatening conditions as any conditions that would fail to meet the housing quality standards under 24 CFR 982.401 and do not meet the definition of life-

threatening provided in this notice. The PHA's HCV administrative plan must list the specific life-threatening conditions that will be identified through the PHA's inspections, including the life-threatening conditions listed in Section 1.A. above and any other conditions that the PHA identified in its HCV administrative plan as life-threatening prior to this notice taking effect.

The PHA must also specify in its administrative plan how it will apply the flexibility provided by § 8(o)(8)(A)(ii) to its HCV and/or PBV program. The PHA may opt to apply the policy to all the PHA's initial inspections or to a portion of the PHA's initial inspections. The PHA's administrative plan must specify the circumstances under which the PHA will enter into a HAP contract for a unit that fails the initial HQS inspection as a result only of non-life-threatening conditions and the circumstances under which a PHA will require the unit to meet all HQS standards before entering into the HAP contract.

The changes to the PHA's HCV administrative plan to define non-life-threatening conditions and to specify how the policy will be applied across its portfolio of units may constitute significant amendments to the PHA's PHA plan, in which case a PHA must follow its PHA plan amendment and public notice requirements before implementing § 8(o)(8)(A)(ii).

#### C. Application of Life-Threatening Definition to aAl Inspections

A PHA that chooses to implement § 8(o)(8)(A)(ii) must apply the list of life-threatening conditions identified in its HCV administrative plan to all HQS inspections that the PHA conducts, not just the initial inspections. In other words, PHAs that adopt § 8(o)(8)(A)(ii) must amend their HCV administrative plans to include HUD's definition of life-threatening conditions, as well as any additional life-threatening conditions included in the PHA's HCV administrative plan that were already defined in the PHA's HCV administrative plan prior to this notice taking effect, and must use those definitions in its ongoing HQS inspections and HQS enforcement activities as well as its initial inspections. The PHA must use the new definition of life-threatening deficiencies across all of its HQS inspections even if the PHA chooses to apply § 8(o)(8)(A)(ii) only to a portion of its initial inspections. The only exception to this uniformity requirement is the presence of deteriorated paint in units built before

1978 to be occupied by a family with a child under the age of 6. The presence of such hazards during the initial HQS inspection means a PHA may not approve the tenancy, execute the HAP contract and make assistance payments until lead hazard reduction is complete. However, in the case where the deficiency is identified for a unit under HAP contract during a regular or interim HQS inspection, lead hazard reduction need not be completed within 24 hours. Instead, PHAs and owners must follow the requirements in 24 CFR part 35.

#### D. Documenting the Absence of Life-Threatening Conditions

A PHA that chooses to implement § 8(o)(8)(A)(ii) must ensure that the unit does not have any life-threatening deficiencies before the PHA approves the assisted tenancy and executes the HAP contract. The PHA must document that the unit passes all inspection items that relate to any life-threatening deficiencies identified in the PHA's HCV administrative plan (including those on HUD's list of life-threatening deficiencies). HUD will provide guidance for PHAs on how to incorporate HUD's definition of life-threatening conditions into its regular HQS procedures for purposes of implementing § 8(o)(8)(A)(ii).

#### E. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(ii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. If the initial inspection on the unit identifies one or more non-life-threatening deficiencies, the PHA must provide the family a list of the deficiencies and offer the family the opportunity to decline to enter into the assisted lease without losing the voucher. The PHA must also notify the family that if the owner fails to correct the non-life-threatening deficiencies within the PHA-specified time period, the PHA will terminate the HAP contract, which in turn terminates the assisted lease, and the family will have to move to another unit in order to receive voucher assistance.

#### F. Housing Assistance Payments

PHAs that adopt § 8(o)(8)(A)(ii) may, with the agreement of the family, approve the assisted tenancy, execute the HAP contract, and make housing assistance payments for a unit that fails the initial HQS inspection only as a result of non-life-threatening conditions as defined above. If the non-life-threatening conditions are not corrected within 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS, the

PHA must withhold any further assistance payments until those conditions are addressed and the unit is in compliance with the housing quality standards. After the 30-day correction period has passed and the PHA begins withholding payments, the PHA may establish a policy regarding the maximum amount of time it will withhold payments before abating payments or terminating the HAP contract for owner non-compliance with HQS. Once the unit is in compliance, the PHA may use any payments withheld to make payments for the period during which payments were withheld.

The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances may the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

If the PHA adopts this administrative policy, 24 CFR 982.305(a) and (b) remain in effect, with the exception that the PHA is required to inspect the unit and determine that there are no life-threatening deficiencies (rather than determining the unit satisfies the HQS) before the approval of the assisted tenancy and the beginning of the assisted lease term.

#### G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(ii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to [HOTMA\\_HQS@hud.gov](mailto:HOTMA_HQS@hud.gov). This notification allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

#### H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(ii), assuming a PHA utilizes the new statutory flexibility. Therefore,

HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(ii) will be scored based on the new statutory standard. Until further guidance is provided, PHAs should continue to report as usual in PIC (that is, the date the PHA enters into PIC for when the unit passes HQS inspection is the date that the unit is found to have no HQS deficiencies, including no non-life-threatening deficiencies).

#### Questions for Comment

1. Is HUD's definition of non-life-threatening conditions as any condition that does not meet HUD's definition of life-threatening appropriate? If not, is there an alternate definition HUD should use?

2. HUD's list of life-threatening conditions is based on the definition currently being used by the UPCS-V demonstration. Are there other sources that HUD should consider for this list?

3. Is establishing 180 days as the maximum time the PHA may withhold or abate payments before terminating the HAP contract for the owner's failure to make the repairs the appropriate time frame? Should this time period be shorter or longer?

4. How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(ii)?

5. Are there any other discretionary factors that PHAs should consider in implementing § 8(o)(8)(A)(ii)?

#### 2. Alternative Inspections (§ 8(o)(8)(A)(iii) of 1937 Act)

The new § 8(o)(8)(A)(iii) of the 1937 Act authorizes occupancy of a unit prior to the PHA's inspection being completed if the property has, in the previous 24 months, passed an alternative inspection method that qualifies as an alternative inspection method pursuant to § 8(o)(8)(E). In this case, a PHA may also make assistance payments retroactively, dating back to the effective date of the HAP contract and assisted lease term, once the unit has been inspected and found to meet HQS standards. In exercising this administrative flexibility under § 8(o)(8)(A)(iii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If a PHA exercises this authority, this document overrides the regulatory requirement at 24 CFR 982.305(a)(2) and (b)(1)(i) that the PHA inspect the unit and determine it meets HQS prior to approving the tenancy and the beginning of the assisted lease term. The requirements of this document also

overrides §§ 982.305(b)(2) and 982.305(c)(1) and (3).

#### A. Eligible Alternative Inspection Methods

In order to qualify as an alternative inspection method for § 8(o)(8)(A)(iii), the inspection method must meet the same requirements for the use of alternative inspections under 24 CFR 982.406. Specifically:

(1) The PHA must be able to obtain the results of the alternative inspection.

(2) If the alternative inspection employs sampling, the PHA may rely on such alternative method only if the HCV or PBV unit was included in the population of units forming the basis of the sample. For example, if a 100-unit property includes 20 units that are occupied by HCV-assisted families or are under a PBV contract, then those 20 units must be included in the universe of units from which the sample was pulled. This does not mean that the 20 units had to be included in the actual sample of units that were inspected under the alternative inspection, but that these units were included in the universe of potential units from which the sample was drawn.

(3) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, without prior HUD approval. However, before employing this alternative method the PHA must amend its HCV administrative plan and notify HUD as described below.

(4) If the PHA wishes to rely on an alternative inspection method other than that used for HOME, LIHTC, or inspections performed by HUD, the PHA must, prior to amending its HCV administrative plan, submit to HUD's Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method "provides the same or greater protection to occupants of dwelling units" as would HQS. A PHA may not rely upon such alternative inspection method unless and until REAC has reviewed and approved use of the method and the PHA has amended its HCV administrative plan and notified HUD as described below. A PHA that uses such alternative inspection method must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to

HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method for § 8(o)(8)(A)(iii).

#### B. Administrative Plans

The PHA must identify the alternative inspection method(s) being used in its HCV administrative plan, making clear the specific properties or types of properties for which the inspection method(s) will be employed. This change may be a significant amendment to the PHA Plan, in which case a PHA must follow its PHA Plan amendment and public notice requirements before using the alternative inspection method.

#### C. Authorization of Occupancy

Section 8(o)(8)(A)(iii) states that the PHA may “authorize occupancy” before the PHA completes its inspection if the property passed the alternative inspection. The PHA authorizes occupancy in response to a Request for Tenancy Approval (RFTA) received from the family. Upon receiving the RFTA, a PHA that elects to use this provision determines whether the property in which the unit is located received an inspection within the previous 24 months that qualifies as an alternative inspection and the unit meets any additional requirements established in the PHA administrative plan. If the property has passed the alternative inspection within the past 24 months, the PHA may approve the assisted tenancy before the PHA conducts the initial HQS inspection. If the PHA chooses to approve the assisted tenancy prior to conducting the HQS inspection, the PHA enters into the HAP contract with the owner and the owner and family enter into the lease agreement and HUD prescribed tenancy addendum before the PHA’s HQS inspection takes place. The PHA must conduct the HQS inspection within 15 days of receiving the RFTA (as described below) and after it has executed the HAP contract.

In the case where the PHA exercises its authority under § 8(o)(8)(A)(iii), the PHA must execute the HAP contract with the owner before the PHA’s inspection takes place. The PHA must execute the HAP contract with the owner on or before the beginning of the lease term, not within 60 days of the beginning of the lease term as provided in 24 CFR 982.305(c). Since the family will have moved into the unit before the PHA does the initial inspection, the PHA must have a contractual relationship with the owner at the time of the inspection so that the PHA can

take enforcement action if the unit does not pass HQS and the owner does not make the necessary repairs within the required timeframes.

#### D. Timing of the PHA Inspection

Section 8(o)(8)(A)(iii) allows the PHA to authorize occupancy before the PHA’s inspection is completed. It does not eliminate the requirement under § 8(o)(8)(A)(i) for the PHA (or designated entity) to conduct the initial inspection. Under the current program regulations at 24 CFR 982.305(b)(2), a PHA with up to 1,250 budgeted units in its tenant-based program must complete the initial inspection within 15 days of receiving the RFTA, and a PHA with more than 1,250 budgeted units in its tenant-based program must complete the initial inspection within a reasonable time after the PHA receives the RFTA. All PHAs that implement Section 8(o)(8)(A)(iii) must complete the initial inspection within 15 days of receiving the RFTA for units located in properties that have met the requirements of an eligible alternative inspection in the past 24 months. The 15-day standard applies to all units for which the PHA employs § 8(o)(8)(A)(iii), regardless of the size of the PHA’s tenant-based program.

#### E. Housing Assistance Payments

The PHA must conduct the initial HQS inspection within 15 days of receiving the RFTA. If the unit passes the PHA’s inspection, the PHA may make HAPs retroactively to the effective date of the HAP contract and the start of the assisted lease term. If the unit does not pass the PHA’s inspection, and if the PHA has not adopted § 8(o)(8)(A)(ii) regarding the correction of non-life-threatening deficiencies, the PHA may not make housing assistance payments until the HQS deficiencies have been corrected. The PHA must notify the owner in writing of the defects and take enforcement action against the owner if any life-threatening defect (as identified in the PHA’s HCV administrative plan) is not corrected within 24 hours or any other defect is not corrected within 30 calendar days or any PHA-approved extension. If the PHA has adopted § 8(o)(8)(A)(ii) and the unit has only non-life-threatening deficiencies, the PHA may make housing assistance payments according to the procedures specified in Section A.1. above.

In deciding whether to implement Section 8(o)(8)(A)(ii), HUD recommends that PHAs carefully consider the complications that could arise if a PHA enters into a HAP contract with an owner on the basis of an alternative

inspection but then identifies HQS deficiencies in its initial inspection. The family may be living with these deficiencies during the correction period and may ultimately have to move if the owner is not willing to make the corrections. The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances will the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

#### F. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(iii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. When authorizing a family to move into a unit prior to the PHA’s inspection, the PHA must advise the family of the PHA’s list of life-threatening deficiencies so that the family can look for such items in the unit and notify the PHA immediately if such deficiencies are found or decline to enter into the lease with the owner.

#### G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(iii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to [HOTMA\\_HQS@hud.gov](mailto:HOTMA_HQS@hud.gov). This allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA’s scoring under HUD’s Section Eight Management Assessment Program (SEMAP) as needed.

#### H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(iii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(iii) will be scored based on the new statutory standard.

## Question for Comment

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(iii)?

## B. Units Owned by a PHA (HOTMA § 105)

HOTMA amends section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding HUD's current definition at 24 CFR 983.3 for the PBV program and as a PHA-owned unit is described at 24 CFR 982.352. A unit is now "owned by a public housing agency" only if the unit is in a project that is one of the following categories:

- (1) Owned by a PHA.
- (2) Owned by an entity wholly controlled by the PHA.
- (3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner. A "controlling interest" is—
  - (A) holding 50 percent or more of the stock of any corporation;
  - (B) having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
  - (C) where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA;
  - (D) holding 50 percent or more of all managing member interests in an LLC;
  - (E) holding 50 percent or more of all general partner interests in a partnership; or
  - (F) equivalent levels of control in other organizational structures.

Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA.

In order to be considered a "PHA-owned" unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building.

For units that were previously considered to be PHA-owned but are no longer PHA-owned due to this definitional change, the PHA must obtain an opinion from its legal counsel that the project in question falls outside the statutory definition. The PHA must keep the opinion in the PHA's files. Until such time that the opinion letter is obtained, the PBV project remains PHA-owned for purposes of program requirements and HUD monitoring. If an ownership structure changes in the future that removes a project from the definition of PHA-owned, the PHA must

obtain and keep the same sort of opinion letter. If an ownership structure changes in a manner that would cause a PBV project to be classified as PHA-owned (e.g., PHA ownership interest is increased to an amount greater than 50 percent), the PHA must identify, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform all of the applicable independent entity responsibilities for the project in compliance with 24 CFR 983.59 and PIH Notice 2015–05 (or subsequent guidance) for PBV and 24 CFR 982.352(b) for HCV tenant-based assistance.

For PBV projects where the PHA has an interest in the project, but such interest does not cause the project to be classified as PHA-owned housing as described above, HUD may review the PHA's rent determination for such projects, including the PHA's methodology of determining rent comparability. HUD intends to issue additional guidance concerning HUD review and monitoring of rent determinations and rent adjustments for PBV projects, including cases in which the PHA has an interest in the PBV project.

## Questions for Comment

1. Should the definition of "controlling interest" be different?
2. Are there programmatic issues with changing a unit's designation from PHA-owned to not PHA-owned that need to be addressed by HUD?
3. What, if any, additional oversight and monitoring should HUD undertake for units in which the PHA has ownership interest in order to ensure that all program requirements (including rent reasonableness and housing quality standards) are being met, especially in cases where the PHA responsible for enforcing those standards has a financial interest in the project?

## C. Project-Based Vouchers (HOTMA § 106)

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include:

- (1) changing the terminology in the statute from "structure" to "project" where the statute refers to structure instead of project;
- (2) changing the PHA HCV program limitation on PBV vouchers from a 20 percent funding limitation to a 20 percent unit limitation calculation and allowing for additional project-basing of vouchers by raising the limit an additional 10 percent for homeless

families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use. The statute also excludes certain projects that were previously subject to federally required rent restrictions or were receiving another type of long-term HUD housing subsidy from the program PBV limitation entirely;

(3) changing the income-mixing cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project (the project unit cap), and making changes to the categories of PBV units that are excepted from this project unit cap;

(4) allowing the PHA to provide for an initial PBV contract of up to 20 years and to further extend that term for an additional 20 years;

(5) allowing the PHA to establish a selection preference for families who *qualify* for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan;

(6) allowing the PHA to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and

(7) allowing PHAs to project-base HUD-VASH and FUP vouchers in accordance with statutory and regulatory requirements of the PBV program without additional requirements for approval by HUD.

This notice does not implement all the provisions of section 106 of HOTMA, but only those where HUD believes it is reasonable to do so and does not provide undue burden on PHAs to implement. HUD may provide additional guidance to this notice to ensure effective implementation and elaborate on issues that may need clarification.

Provisions under section 106 of HOTMA that are *not* implemented by this document and that the PHA and owner may not yet implement are as follows:

(1) Entering into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP) (see section 106(a)(4) of HOTMA);

(2) Providing rent adjustments using an operating cost factor (see section 106(a)(6) of HOTMA);

(3) Establishing and utilizing procedures for owner-maintained site-

based waiting lists (see section 106(a)(7) of HOTMA); and

(4) Concerning the environmental review requirements for existing housing (see section 106(a)(8) of HOTMA).

1. Changing “structure” to “project” (§ 106(a)(1) of HOTMA)

This provision amends section 8(o)(13) by replacing the term “structure” with the term “project” throughout the paragraph. No guidance is needed to make this change. In accordance with the law, this document serves as official notice that this statutory change is effective as of *April 18, 2017*. HUD will issue any needed conforming regulatory changes in the future.

2. Changing the Maximum Amount of PBVs Permitted in the PHA HCV Program (§ 8(o)(13)(B) of 1937 Act).

This section of the document overrides 24 CFR 983.6 of the PBV program regulations.

A. Maximum Amount of PBVs in the PHA’s HCV Program

Under the new § 8(o)(13)(B) of the 1937 Act, PHAs may now project-base up to 20 percent of the PHA’s authorized units, instead of 20 percent of the PHA’s voucher budget authority. However, the PHA is still responsible for determining the amount of budget authority it has is available and ensuring that the amount of assistance that will be attached to the units is available under the ACC, regardless of whether the PHA has vouchers available for project-basing.

Prior to issuing a request for proposals (RFP) (24 CFR 983.51(b)(1)), selecting a project based on a previous competition (24 CFR 983.51(b)(2)), or selecting a project without following a competition process where the PHA has ownership interest and is engaged in improving, developing or replacing a public housing property or site (see section C.7 of this document), the PHA must submit to the local field office all the following information (in lieu of following the requirements of 24 CFR 983.6(d)):

(1) The total number of units authorized under the Consolidated Annual Contributions Contract (ACC) for the PHA (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below). This number of authorized units includes special-purpose vouchers such as HUD–VASH (except as provided in section D below) and Family Unification Program vouchers. The PHA must also identify the number of PBV units that are excluded from total, if applicable.

(2) The total number of units currently committed to PBV (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below.). The number of units “committed to PBV” is comprised of the total number of units that are either (a) currently under PBV HAP contract, (b) under an Agreement to Enter into HAP contract (AHAP), or (c) covered by a notice of proposal selection (24 CFR 983.51(d)). The PHA must also identify the number of PBV units that are excluded from the total, if applicable. This number must match the number of PBV units excluded from the baseline units (discussed above).

(3) The number of units to which the PHA is proposing to attach project-based assistance through the new RFP or selection.

The PHA is no longer required to submit information on funding or available budget authority when submitting information to HUD on its intent to project-base vouchers. However, PHAs are still required to provide this PBV unit information to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the Request for Proposals (or makes the selection based on a previous competition or noncompetitively as applicable). The PHA continues to submit the required information electronically to the HUD field office by sending an email to [pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov). The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

B. Additional Project-Based Units

HOTMA further allows PHAs to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of the following categories:

(1) The units are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), and contained in the Continuum of Care Interim Rule at 24 CFR 578.3. See <https://www.federalregister.gov/d/2012-17546> and <https://www.federalregister.gov/d/2016-13684>.

(2) The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define “veteran” for purposes of determining if the units are eligible for this exception. For example, the PHA could require that the veteran must be eligible to receive supportive services from the Department of

Veterans Affairs or require that the veteran was not dishonorably discharged.

(3) The units provide supportive housing to persons with disabilities or to elderly persons. The definitions of a person with disabilities and an elderly person are found at 24 CFR 5.403. Supportive housing means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):

(A) meal service adequate to meet nutritional need,

(B) housekeeping aid,

(C) personal assistance,

(D) transportation services;

(E) health-related services;

(F) educational and employment services; or

(G) other services designed to help the recipient live in the community as independently as possible.

The PHA must include in the PHA administrative plan the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA may not require participation as a condition of living in an excepted unit, although such services may be offered.

Note that in accordance with 24 CFR 983.354, with the exception of an assisted living facility, the owner of a PBV project may not require the assisted family to pay charges for meals or supportive services, and non-payment of such charges by the family is not grounds for termination of tenancy. In the case of an assisted living facility (as defined in § 983.3) receiving PBV assistance, owners may charge families for meals or supportive services. These charges may not be included in the rent to owner or the calculation of reasonable rent.

(4) The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

These categories are those under which a PHA is permitted to project-base an additional 10 percent of its units above the normally applicable 20 percent PBV program limitation. These categories are separate and distinct from exceptions to the income-mixing requirements that limit the number and percentage of units within a particular



project to which PBV assistance may be attached (no more than the greater of 25 units or 25 percent of the units), which is discussed later in this document.

If a PHA wishes to add PBV units under this exception authority, the PHA must submit the same information in section C.2.A above to the Field Office, and identify the exception category (or categories) for which the PHA will project-base additional units (up to an additional 10 percent above the normally applicable PBV program limitation) and the specific number of units that qualify under the exception category.

PBV units may only be covered by this 10 percent exception authority if the PBV HAP contract was first executed on or after the effective date of this notice.

### C. Units Not Subject to PBV Program Unit Limitation

New language in section 8(o)(13)(B) provides that units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation when PBV assistance is attached to them.

(1) *Exception requirements.* For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice; and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project based on a prior competition or without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception. (The statute provides that the units must have been receiving "other" project-based assistance provided by the Secretary in order to cover by the exception authority.)

Both existing units and units rehabilitated under the PBV program are eligible for this exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) *PBV New Construction Units that Qualify for the Exception as Replacement Housing.* For purposes of this notice, a PBV new construction unit must meet all of the following requirements in order to be a replacement unit and qualify for this exception to the program limitation:

(a) The unit which the PBV new construction unit is replacing (*i.e.*, the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as a majority of the replacement units are built back on the site of the

original public housing development and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

(c) One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least *one* of the following:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

HUD is specifically seeking comment on what changes HUD should consider making to the initial conditions set forth under this notice in order for a PBV new construction unit to qualify as replacement housing and the exception to the PBV program limitation. Please see the questions for comment section, below.

(3) *Unit size configuration and number of units for new construction and rehabilitation projects.* The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the program limitation exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the program limitation in this example would be 40 units, and the remaining 10 PBV units in the project would count against the program limitation.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

(4) *Applicability of PBV project selection requirements.* For owner proposals involving all of these PBV



properties (existing, rehabilitation, and new construction), the standard criteria for selection of projects and the units to which project-based assistance can be attached, including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements, are still in effect. Likewise, the requirements of HUD Notice PIH 2013–27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remains in effect. The only difference is that the PBV units in these projects will not be included in determining if a PHA has exceeded its PBV program cap. These units are excluded from both the total number of units authorized under the PHA's ACC and the number of units committed to PBV in the program.

As noted above, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units (*i.e.*, identify the property and the covered program or programs under which the property was formerly assisted). The PHA submits the required information electronically to the HUD field office by sending an email to [pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov). The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

#### D. Other Units Not Subject to the PBV Program Unit Calculation

In addition to the units listed under section C.2.C above, other units are not subject to the program limitation calculation and would be excluded in the total number of authorized units and the total number of PBV units currently committed to PBV that the PHA submits to the field office (in lieu of following the requirements of 24 CFR 983.6(b)).

(1) *RAD exception.* HUD waived the 20 percent limitation at section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6 for PBV units under the RAD demonstration. This waiver remains in effect, and, consequently, a PHA that continues to be exempted from submitting information on its PBV cap calculation to HUD when it is project-basing vouchers under RAD. Furthermore, RAD PBV units are excluded from both the total number of units under the ACC and the units committed to PBV when determining if the PHA has vouchers available to

project-base under the program limit requirements.

(2) *HUD–VASH PBV Set-aside vouchers.* HUD has awarded vouchers specifically designated for project-based assistance out of the HUD–VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these voucher allocations were specifically allocated for project-based assistance, HUD has determined that the PBV units supported by those vouchers should not count against the PHA's PBV program unit limitation as long as those vouchers remain under PBV HAP contract at the designated project. The Appropriations Acts funding these vouchers authorize the HUD Secretary, in consultation with the VA Secretary, to waive or specify alternative requirements for any provision of any statute or regulation that the HUD Secretary administers in connection with the use of those HUD–VASH funds (except for requirements related to fair housing, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance. Accordingly, section 8(o)(13)(B) is waived for those HUD–VASH PBV vouchers.

This exception only applies to HUD–VASH PBV vouchers that were awarded to the PHA through the HUD–VASH PBV set-aside funding process. All other HUD–VASH vouchers, including those HUD–VASH vouchers that the PHA opts to project-base, are still subject to the PHA PBV program limitation, and would be included in the units authorized and units committed to PBV that the PHA submits to HUD under this document, which replaces the voucher funding information that was previously provided under 24 CFR 983.6(b).

(3) *Additional categories established by HUD by regulation.* Section 8(o)(B)(ii), as amended by HOTMA, further provides that the Secretary may, by regulation, establish additional categories for the exception to the PBV program unit limitation. HUD has not yet exercised this authority but may do so in the future.

For future PBV projects other than RAD, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. The PHA submits the required information electronically to

the HUD field office by sending an email to [pbvsubmission@hud.gov](mailto:pbvsubmission@hud.gov). The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

#### Questions for Comment

1. Should HUD allow PHAs that are administering PBV units that would qualify under the additional 10 percent exception categories but were placed under HAP contract prior to the effective date of this notice count those units as excepted? This would potentially allow a PHA that was at the 20 percent limit to add new PBV units that do not fall under any of the exception categories, because counting the PBV units that were already under HAP under the new 10 percent exception authority would free up space under the regular 20 percent cap.

2. The new (o)(13)(B) further provides that the additional 10 percent exception may be applied to units that are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less. This document, for now, only applies the statutory exception provision to those units located in census tracts with poverty rates of 20 percent or less. What criteria should HUD use to define or determine the areas where vouchers are “difficult to use” for this exception category?

3. The statute allows the Secretary to issue regulations to create additional exception categories from the normally applicable PBV program limit, which could apply to the additional 10 percent authority or that could be exempted from the program limit entirely. What additional exception categories that should be included in the 10 percent authority? What other types of units should be exempted from the PBV program limit entirely?

4. This document sets out certain conditions that a PBV new construction unit must meet in order to be considered replacement housing and eligible for the exception to the PHA PBV program limitation. Are those conditions appropriate or should they be changed or expanded?

5. In light of the impact that additional exceptions and exemptions from the program limit will have on the number of vouchers available for tenant-based assistance under the HCV program, should HUD establish additional categories at all? What limits or requirements on project-basing, if any, should be placed on the use of this exception authority to ensure that the PHA has sufficient tenant-based assistance available for families to exercise their statutory right to move

from the PBV project with tenant-based assistance after one year of occupancy at the PBV project?

### 3. Changes to Income-Mixing Requirements for a Project (Project Cap) (§ 8(o)(13)(D) of 1937 Act)

This section overrides the PBV program regulations at 24 CFR 983.56(a) and 983.56(b)(1) and (2). This section also overrides §§ 983.262(c) and (d).

#### A. PBV Income-Mixing Project Cap, Generally

HOTMA amended the income-mixing requirement for an individual project found in section 8(o)(13)(D) of the 1937 Act. The limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. However, owners under current HAP contracts are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements. For example, if an owner has a PBV HAP contract for a 20 unit project, and the HAP contract provides that 15 of those units were exempted from the 25 percent income mixing requirement because the units are designated for elderly families, the owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.

Except as provided below, the PBV HAP contract may not include units in excess of the greater of 25 units or 25 percent of the units in the project.

#### B. Exceptions to Project Cap

Units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:

(1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).

(2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit).

Families eligible for supportive services under this exception to the project cap would include families with a household member with a disability, among other populations. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.

A PHA may not require participation in the supportive services as a condition of living in an excepted unit, although such services may be offered. In cases where the unit is excepted because of FSS supportive services or any other supportive services as defined in the PHA administrative plan, if a family at the time of initial tenancy was eligible for FSS supportive services and successfully completes its FSS contract of participation or the supportive services objective, the unit continues to count as an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.

However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently *is no longer eligible* for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the ineligible family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract (unless it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 983.207(a)).

(3) Projects that are in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

The PHA may only refer qualifying families for occupancy of excepted units under (1) and (2) above.

#### C. Grandfathering of Certain Properties

The HOTMA amendments entirely eliminate the statutory exemption from a project cap for projects that serve disabled families and modify the supportive services exception. Previously, the statutory exception required that the family must be

actually receiving the supportive services for the individual unit to be exempted from the income-mixing requirement. The new requirement provides that the project must make supportive services available to all assisted families in the project (but that the family does not have to actually accept and receive the supportive services for the exception to apply to the unit). However, projects that are using the former statutory exemptions will continue to operate under the pre-HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the PHA and the owner agree by mutual consent to change the conditions to the HOTMA requirement. The PBV HAP contract may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g., excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the unit.)

#### D. Projects Not Subject to a Project Cap

New language in section 8(o)(13)(D) exempts certain types of units receiving project-based voucher assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. This exception to the project cap may only be applied to projects that were not already under HAP contract on the effective date of this document. The exception may not be applied retroactively to projects under HAP contract on the effective date of this notice or subsequently applied at the extension of those HAP contracts.

(1) *Exception requirements.* For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice, and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the moderate rehabilitation program, including the SRO program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (section 236(f)(2) of the National Housing Act); or

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance are not covered by this exception. The statute provides that the units must have been receiving "other" project-based assistance provided by the Secretary in order to be covered by the exception authority.

For proposals involving these properties, the standard criteria for selection of projects and the units to which PBV assistance can be applied are still in effect. The only difference is that any PBV assistance provided to these properties may be used to project base up to 100 percent of the units in the project.

Both existing units or units rehabilitated under the PBV program are eligible for this project cap exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) *PBV New Construction Units that Qualify for the Exception as Replacement Housing.* For purposes of this document, the PBV new construction unit must meet the following requirements in order to be a replacement unit and qualify for the project cap exception (these are the same conditions that apply for units to qualify as replacement units for purposes of the exception to the PBV Program unit limit under section C.2.C of this document above):

(a) The unit which the PBV new construction unit is replacing (*i.e.*, the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above within 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project under a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection is the date of the PHA notice of owner selection (24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. (An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as new project is generally located at the same site as the original project for purposes of this requirement.)

(c) One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least *one* of the following:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

(3) *Unit size configuration and number of units.* The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the project cap exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the project cap in this

example would be 40 units, and the remaining 10 PBV units would be subject to the project cap and would need to qualify for an exception on the basis of another exception category.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

#### Questions for Comment

1. What other standards should HUD require for supportive services under B.2, above?

2. The Secretary has authority to define areas where tenant-based vouchers are "difficult to use." This document, for now, only applies the statutory provision of census tracts with poverty rates of 20 percent or less. What are some other criteria that HUD should include? For example, other possible criteria include rental vacancy rates, voucher success rates, high cost areas as captured by the difference between the zip code level small area FMR and the metropolitan-wide FMR, or alternative measures of low-poverty areas.

3. Are there additional properties formerly subject to federal rent restrictions or receiving rental assistance from HUD that should be exempted from a project cap?

4. The statute allows HUD to impose additional monitoring and requirements on projects that project-base assistance for more than 40 percent of the units. How can PHAs ensure that this increase in PBV units will not hamper mobility efforts and moves to opportunity areas?

4. PBV Contract Terms (§ 8(o)(13)(F) and (G) of 1937 Act and §§ 106(a)(4) and (5) of HOTMA)

#### A. Initial Term of HAP Contract and Extension of Term

The initial HAP Contract term may now be of a period of up to 20 years (instead of the prior 15-year limitation). The length of the term of the initial HAP contract for any HAP contract unit may not be less than one year nor more than 20 years (instead of the prior 15-year limitation on the initial term of the HAP contract). In addition, the PHA may agree to enter into an extension (at the time of the initial HAP contract execution or any time before the expiration of the contract, for an additional term of up to 20 years (as opposed to the prior 15-year limitation on the term of the contract extension). A HAP contract extension may not exceed 20 years. The PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively.

PHAs and owners with HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extension) would be 40 years. PHAs and owners with HAP contracts that are no longer in the initial term may mutually agree to extend the HAP contract for a total extension term of 20 years. The maximum term of the HAP contract in that case would be 20 years plus the number of years that constituted the initial term of the HAP contract.

If the project in question is a PHA-owned project, any change in the initial term and any subsequent extension is also subject to the approval of the independent entity.

This section overrides 24 CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirements related to PHA-owned units.

#### B. Priority of Assistance Contracts

The new section 8(o)(13)(F)(i)(I) requires PHAs, in times of insufficient funding, to first take all cost-savings measures prior to failing to make payments under existing PBV HAP contracts (*i.e.*, terminating the HAP contract). If the PHA has taken all cost-savings measures and still has insufficient funding to make HAPs, it is left up to the discretion of the PHA to choose to terminate HCV or PBV assistance first. The list of cost-savings measures that must be taken prior to terminating assistance contracts are found in PIH Notice 2011–28.<sup>1</sup>

#### C. Biennial Inspection Requirements

The new language in section 8(o)(13)(F)(i)(II) of the 1937 Act is a change that clarifies the frequency of inspection requirement for PBV projects to those found in paragraph (8), which allows for biennial as opposed to annual inspections. The language in paragraph (13)(F)(i)(II) merely clarifies that for PBV assistance, biennial inspections may be conducted using a sample of units. The PBV regulations at 24 CFR 983.103 were revised under the final rule entitled, “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,” published in the **Federal Register** on March 8, 2016,

at 81 FR 12353. This rule amended regulations to reflect the biennial inspection requirement for PBV and that a random sampling of at least 20 percent of the PBV units in each building may be used to fulfill that biennial inspection requirement.

#### D. Additional Units Without Competition

The new language in section 8(o)(13)(F)(ii) allows PHAs and owners to amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements (see 24 CFR 983.51(b)) for those added PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and the individual project caps, found in sections 8(o)(13)(B) and (D) of the 1937 Act, respectively. Furthermore, prior to attaching additional units without competition, the PHA must submit to the local field office the information described in section C.2.A above, which pertains to demonstrating the PHA is able to project-base additional units without exceeding the PHA program limitation on PBV units. PHAs must also detail their intent to add PBV units in this manner in their administrative plan, along with their rationale for adding PBVs to this specific project. This provision overrides the restriction in 24 CFR 983.207(b) that additional units may only be added to the HAP contract during the three-year period immediately following execution of the HAP contract. All of the other requirements under § 983.207(b) continue to apply.

#### E. Additional Contract Conditions

The new 8(o)(13)(F)(IV) allows the PBV HAP contract to have additional conditions, including conditions related to continuation, termination, or expiration. HUD is not adding any additional conditions to the PBV HAP contract at this time.

The section further requires that HAP contracts specify that, upon termination or expiration of a contract that is not extended, a family living at the property is entitled to receive a tenant-based voucher (the voucher that was previously providing project-based assistance for the family in the PBV project). The PHA must provide the family with a voucher and that family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance if the unit complies with inspection requirements and rent reasonableness

requirements. The family must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount if the unit rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance (for example, the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

The statutory owner notice requirements related to the contract termination or expiration at 24 CFR 983.206 continue to apply to the PBV program. If the owner fails to provide timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of the rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of the rent. For families that wish to remain at the property, the HCV tenant-based assistance would not commence until the owner's required notice period ends.

#### Question for Comment

Are there additional parameters HUD should consider placing on PHAs and owners when amending HAP contract terms related to continuation, termination or expiration?

#### 5. Preference for Families Who Qualify for Voluntary Services (§ 8(o)(13)(J) of 1937 Act)

Section 106(a)(7)(A) and (C) of HOTMA makes changes to section 8(o)(13)(J) of the 1937 Act to allow a PHA to allow owners with PBV contracts to create and maintain site-based waiting lists. HUD is not implementing these provisions at this time, but instead will pursue rulemaking.

However, section 106(a)(7)(B) of HOTMA provides that a PHA may establish a selection preference for families who qualify for voluntary

services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. This is a change from the current regulatory requirement at 24 CFR 983.251(d), that provides in selecting families, PHAs may give preference to disabled families who need the services offered at a particular project in accordance with the limits under the regulatory paragraph, regardless of whether the family qualifies for the supportive service and will actually be able to receive the supportive services. Note, however, that the prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. This document provides PHAs with additional guidance and information on how to establish such preferences.

#### A. Selection Preference for Families Who Qualify for Voluntary Services

##### (1) Consistency With Nondiscrimination and Civil Rights Statutes and Requirements

Both the owner and the PHA are responsible for ensuring that the proposed preference is consistent with all applicable Federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and HUD's Equal Access Rule. See 24 CFR 5.105(a). It is also the responsibility of the PHA to ensure that an owner is carrying out the PHA's program in a manner consistent with Section 504. There are unique requirements regarding the selection preference when considered in the context of providing services for individuals with disabilities. In particular, the statutory language permitting a preference for individuals who qualify for voluntary services, including disability-specific services, must be read consistent with Federal laws that provide protections against discrimination based on disability and segregation of individuals with disabilities as well as the affirmative requirement that programs, services, and activities be provided in the most integrated setting appropriate to the needs of individuals with disabilities. Among these requirements, PHAs and owners, and in certain circumstances services providers, may not impose eligibility criteria that discriminate on the basis of disability, and must comply with the integration mandate.

The HOTMA amendments permit a PHA to establish a preference based on who qualifies for voluntary services, including disability-related services, offered in conjunction with the assisted units. Consistent with Federal nondiscrimination laws, qualifications or eligibility criteria, including for voluntary services, cannot be applied in a discriminatory manner. In particular, PHAs, owners, and service providers cannot impose additional admissions criteria that discriminate or are applied in a discriminatory manner. Any individual who is qualified for the services must be able to receive the preference, including qualified individuals with disabilities, regardless of disability type.

Voluntary services can consist of a variety of activities, including for example, meal service adequate to meet nutritional needs, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, and other services designed to help the recipient live in the community as independently as possible. Voluntary services can also include disability-specific services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided to support a person with a disability. Such services may also include, for example, services provided by State Medicaid programs to promote community based settings for individuals with disabilities.

The revised statute permits such a preference to be established if it is consistent with the PHA plan. As part of the PHA plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA plan and all applicable federal fair housing and civil rights requirements. In developing any proposed targeted preferences, PHAs must comply with the requirements outlined in PIH Notice 2012–31 and HUD's *Statement on the Role of Housing in Accomplishing the Goals of Olmstead*.

##### (2) Preferences for Disability-Specific Services

A PHA or owner may offer a preference for individuals who qualify for voluntary services offered in connection with the units. Such services may or may not include disability-specific services. For example, a preference may be only for persons who qualify for employment assistance, or for transportation services, or a preference may be for persons who qualify for either housekeeping assistance, case management, or outpatient health services. If a PHA or owner decides, however, that the only preference that will be offered is based on qualification for a disability-specific service, it is especially important for the entity to consider how to implement this preference consistent with Section 504 and the ADA, and their implementing regulations.

Further, the statutory language allowing an agency or owner to give preference to families who qualify for voluntary services, including disability-specific services, must be implemented consistent with the integration mandate under Section 504 and Title II of the ADA. 24 CFR 8.4(d); 28 CFR 35.130(d). The integration mandate, as mentioned earlier in the notice, requires that covered entities ensure persons with disabilities can interact with persons without disabilities to the fullest extent possible. HUD has provided guidance on what the Department considers integrated settings in the housing context:

“Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.”<sup>2</sup>

By contrast, HUD has stated that segregated settings are “occupied exclusively or primarily by individuals with disabilities.”<sup>3</sup>

<sup>2</sup> Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead, <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

<sup>3</sup> The U.S. Department of Justice provides additional relevant guidance on the application of the integration mandate under Title II and Section 504 in its Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C., <https://www.ada.gov/olmstead/>

In addition, requirements under the Fair Housing Act, including the regulatory obligation under 24 CFR 100.70(c)(4) regarding dispersion of units occupied by individuals with disabilities and not assigning individuals with disabilities to a particular section or floor of a building, continue to apply.

As more states implement requirements under Title II of the ADA and *Olmstead*, which are focused on transitioning individuals from institutional and other segregated settings into integrated community-based settings, as well as assisting individuals at risk of institutionalization from entering such settings, there is an increased need for affordable, integrated, and accessible housing opportunities. To assist with these concerns, PHAs or owners may want to coordinate with other relevant agencies implementing *Olmstead* planning and transition planning related to the Centers for Medicare and Medicaid Services (CMS)' Home and Community-Based Setting (HCBS) regulation in their State. HUD encourages the PHA or owner to consult with the relevant agencies who make determinations as to whether the housing qualifies as a HCBS under the CMS regulations to allow for State Medicaid funding to be accessed at the site. The CMS regulations specify the qualities that HCBS must have in order to receive funding, including that the setting is integrated.

#### B. Informed Client Choice and Self-Determination

HUD emphasizes the importance of client choice, independence, and self-determination in implementing this provision. Consistent with the statutory language, as well as federal fair housing and civil rights requirements, participation in services is voluntary. Accordingly, the existing regulatory language at 24 CFR 982.251(d)(2) stating that residents with disabilities shall not be required to accept the particular services at the project continues to apply. Program beneficiaries who receive housing because of the preference still have the ability to receive voluntary services from a service provider of their choosing, or choose not to participate in services at all. Similarly, an individual who chooses to no longer participate in a service or who no longer qualifies for services he or she did qualify for at the time of initial occupancy cannot subsequently be denied a continued housing opportunity

because of this changed circumstance. A PHA or owner also cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

#### C. Additional Requirements

- PHAs and project owners must also ensure that their programs are operated in a manner to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. 3608, and related authorities, such as the Affirmatively Furthering Fair Housing Rule, 24 CFR 5.150 *et seq.*

- Housing providers cannot use a preference to impose additional criteria that intentionally discriminates against members of any protected class or may result in a discriminatory effect. For recent HUD guidance on discriminatory effects under the Fair Housing Act, see Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, [https://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf); Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, <http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>.

- PHAs and owners must also ensure their implementation of preferences and other operations comply with other Federal nondiscrimination requirements. This includes, among other requirements, providing reasonable accommodations for persons with disabilities, auxiliary aids and services necessary to ensure effective communication with individuals with disabilities, which includes ensuring that information is provided in appropriate accessible formats as needed, *e.g.*, Braille, audio, large type, accessible web-based applications, assistive listening devices, and sign language interpreters, and taking reasonable steps to maximize the utilization of accessible units (units accessible to persons with mobility impairments and units accessible to persons with hearing or vision impairments) by eligible individuals who need the accessibility features of the particular unit. For additional guidance on permissible PHA preferences, please see the *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead*, <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>, and PIH Notice 2012-31,

<http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-31.pdf>. In addition, HUD anticipates issuing additional guidance on the application of HOTMA, including fair housing guidance.

#### 6. Attaching PBVs to Structures Owned by PHAs (§ 8(o)(13)(N) of 1937 Act)

The new section 8(o)(13)(N) allows PHAs to attach PBVs to projects in which the PHA has an ownership interest or has control of, without following a competitive process, in cases where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The PHA's ownership interest does not have to meet the definition of the term "owned by a PHA" established by section 105 of HOTMA. For purposes of this section, an ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; a stockholder; a member, or general or limited partner; or a member of a limited liability corporation. These PBV projects are still subject to all other applicable PBV requirements.

In order to be subject to this non-competitive exception, the PHA must be planning rehabilitation or construction on the project with a minimum of \$25,000 per unit in hard costs. The PHA must detail in its PHA administrative plan what work it plans to do on the property or site and how many units of PBV it is planning on adding to the site.

This section overrides the regulatory requirements for selection of PBV proposals at 24 CFR 983.51(b).

#### Questions for Comment

1. Is the \$25,000 per unit threshold appropriate for this exception from the competitive process? HUD chose the \$25,000 threshold based on the findings of the 2010 Capital Needs study on the average existing capital need per public housing unit, but is seeking public comment on other possible dollar thresholds or methodologies for determining whether a PHA's rehabilitation or construction projects qualifies as an initiative to improve, develop, or replace a public housing property or site.

2. The law provides that this section is applicable to a PHA that has an ownership interest in or has control of the project. Are there examples or cases where a PHA may have control of a project but would not have any ownership interest in the project that HUD should address in future implementing guidance or when

*q&a\_olmstead.htm* and its *Olmstead* compliance and enforcement efforts, <https://www.ada.gov/olmstead/index.htm>.

conforming the regulation to these provisions?

#### 7. Project-Basing Special-Purpose Vouchers (§ 8(o)(13)(O) of 1937 Act)

HOTMA added a new section 8(o)(13)(O) to the 1937 Act, allowing PHAs to project-base Family Unification Program (FUP) and HUD-VASH vouchers without requiring additional HUD approval. This document serves as official notice that this statutory change is effective as of *April 18, 2017*. This document also provides additional information on how PHAs may project-base HUD-VASH or FUP vouchers.

All normally applicable PBV requirements under 24 CFR part 983 or implemented through this document apply to project-based FUP and HUD-VASH vouchers, and PHAs must continue to meet all of their obligations to assist the required number of HUD-VASH and FUP families for their HCV programs.

##### A. HUD-VASH Vouchers

The most current requirements for the HUD-VASH program may be found in PIH Notice 2015–10. In that notice, HUD requires that PHAs wishing to project-base HUD-VASH vouchers must meet certain requirements in order to do so. Those PBV requirements are now superseded by the statutory amendments made by HOTMA.

However, statutory authorization for the HUD-VASH program, including section 8(o)(19) of the 1937 Act and the FY 2016 appropriations Act,<sup>4</sup> requires that PHAs conduct their HUD-VASH programs in conjunction with a Veterans Administration Medical Center (VAMC), which must make supportive services available to individuals receiving HUD-VASH assistance. Therefore, in order to meet the requirement that the PHA provide rental assistance in conjunction with a VAMC's ability to provide supportive services, PHAs wishing to project-base HUD-VASH vouchers must consult with their partner VAMC to ensure that the VAMC will be able to continue to provide supportive services should the PHA project-base its HUD-VASH vouchers. Furthermore, PHAs that received HUD-VASH PBV set-aside funds must continue to comply with all of the terms and conditions that apply to those vouchers.

##### B. Family Unification Program (FUP) Vouchers

HOTMA also allows PHAs to project-base vouchers awarded to the PHA for

the FUP program without further approval from HUD. However, HUD encourages PHAs wishing to do so to consider whether project-basing such vouchers yields significant benefits, whether doing so would limit the ability of youth to use such vouchers, and whether project-basing FUP vouchers would allow the PHA to serve the populations eligible for FUP vouchers in such a way as to keep the units filled. A PHA project-basing FUP vouchers may limit the project-based vouchers to one category of FUP eligible families, such as making the project-based vouchers exclusively available for FUP-youth.

##### Questions for Comment

1. Is there an advantage to grouping FUP families (either FUP families, FUP youth, or all FUP families) in one project (as opposed to interspersed with other PBV units in a PHA's portfolio)?
2. How would the PHA administer waitlists and preferences to manage FUP availability across multiple waitlists?
3. How do PHAs ensure mobility access with a time-limited voucher (*i.e.*, FUP voucher that is assisting a FUP-eligible youth)?
4. How do PHAs ensure full occupancy of PBV units with time-limited vouchers and limited numbers?

##### D. Using Vouchers in Manufactured Housing (HOTMA § 112)

Section 112 of HOTMA amends section 8(o)(12) of the 1937 Act with respect to the use of voucher assistance provided to families that are owners of manufactured housing. Prior to the HOTMA amendment, voucher assistance payments on behalf of owners of manufactured housing under section 8(o)(12) could only be made to assist the manufactured home owner with the rent for the space on which the manufactured home is located (the manufactured home space). Section 112 expanded the definition of "rent" for manufactured home owners receiving voucher assistance to also include other housing expenses, specifically the monthly payments made by the family to amortize the cost of purchasing the manufactured home (including any required insurance and property taxes) and tenant-paid utilities.

The use of housing assistance payments to assist a manufactured home owner with the rent of the manufactured home space and other eligible expenses continues to be a special housing type under 24 CFR part 982 subpart M. In general, the PHA is not required to permit families to use any of the special housing types and may limit the number

of families using special housing types. However, the PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

For manufactured home owners that are currently receiving HCV assistance to rent the manufactured home space in accordance with 24 CFR 982.622 through 982.624, the PHA must implement the HOTMA changes to the calculation of "rent" and the amount of subsidy effective on the first regular reexamination following the effective date of this document, or no later than one year after the effective date of this document (if the first regular examination falls after that date). The new subsidy calculation shall apply from that point on during the term of the HAP contract.

24 CFR 982.622 and 982.624 continue to apply for HCV assistance provided on behalf of a manufactured home owner that is renting the manufactured home space. Section 982.623, which covers how the housing assistance payment is calculated, is no longer applicable. Instead, if a PHA chooses to provide voucher assistance to a manufactured home owner who is renting the manufactured home space, the monthly housing assistance payment is calculated as the lower of:

- (a) The PHA payment standard minus the total tenant payment; or
- (b) The rent of the manufactured home space (including other eligible housing expenses) minus the total tenant payment.

The PHA payment standard is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. The payment standard for the family is the lower of the payment standard amount for the family unit size or the payment standard amount for the size (number of bedrooms) of the manufactured home. The separate fair market rent (FMR) for a manufactured home space is no longer applicable to establishing the payment standard for a manufactured homeowner who is renting the manufactured home space since the payment is assisting the homeowner with other housing expenses. The PHA payment standard will be based on the applicable HUD published FMR for the area in which the manufactured home space is located.

The rent of the manufactured home space (including other eligible housing expenses) is the total of:

- (a) The rent charged for the manufactured home space;

<sup>4</sup> Division L, Title II of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015).



(b) owner maintenance and management charges for the space;

(c) the monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and

(d) the applicable allowances for tenant paid utilities.

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

The total amount for the rent of the manufactured home space and the other eligible expenses is reported in PIC on the HUD-50058 on line 12k, even though it includes amounts in addition to the total monthly rent payable to the owner under the lease for the contract unit.

The utility allowances are the applicable utility allowances from the PHA utility allowance schedule under 24 CFR 982.517 and 982.624.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender or utility company.

HOTMA further provides that the PHA may choose to make a single payment to the family for the entire monthly assistance amount rather than making the HAP directly to the owner of the manufactured home space the family is renting. HUD is not implementing this option at this time but is seeking comment on how to best implement this option, including how to best ensure the PHA may still take enforcement action when necessary against an owner who fails to fulfill his or her responsibilities under the HCV program.

#### Question for Comment

When implementing the option to allow the PHA to make a single HAP directly to the family, how would HUD ensure that a PHA take enforcement

action against an owner of a manufactured home space who fails to fulfill his or her responsibilities under the HCV program? Would a manufactured home park owner be willing to enter into a contract under which he or she would receive no direct payment?

### III. Environmental Impact Certification

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on [www.regulations.gov](http://www.regulations.gov).

Dated: January 10, 2017.

**Nani Coloretti,**

*Deputy Secretary.*

[FR Doc. 2017-00911 Filed 1-17-17; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR 30

[178A2100DD/AAKC001030/  
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#### Proposed Membership of the Bureau of Indian Education Accountability Negotiated Rulemaking Committee

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed membership of negotiated rulemaking committee; request for nominations; and request for comments.

**SUMMARY:** The Secretary of the Interior has selected proposed members to form the Bureau of Indian Education (BIE) Accountability Negotiated Rulemaking Committee (Committee) which will recommend revisions to the existing regulations to implement the Secretary's responsibility to define the standards, assessments, and accountability system for Bureau-funded schools, as required by the Every Student Succeeds Act (ESSA). Representatives were nominated by Tribes whose students attend Bureau-funded schools. After considering nominations, the Secretary proposes to appoint the persons named in this notice as Tribal Committee members. Tribes, Tribal organizations, and individual Tribal members may submit comments on the proposed Tribal Committee membership, apply for Tribal membership on the

Committee, or submit other nominations for Tribal membership on the Committee. The Secretary also proposes to appoint Federal representatives to the Committee as listed.

**DATES:** Comments on the proposed Tribal members of this Committee must be submitted no later than February 17, 2017.

**ADDRESSES:** Send comments and nominations to the Designated Federal Official: Sue Bement, Education Program Specialist, Bureau of Indian Education, C/O Office of Regulatory Affairs and Collaborative Action, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104. Or email at: [BIEcomments@bia.gov](mailto:BIEcomments@bia.gov).

**FOR FURTHER INFORMATION CONTACT:** Sue Bement, Designated Federal Official; email [BIEcomments@bia.gov](mailto:BIEcomments@bia.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The purpose of the BIE Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) in a manner that:

(1) Reflects the unique government-to-government relationship between American Indian Tribes and the United States;

(2) Ensures that the membership of the Committee includes only representatives of the Federal Government and Tribes; and

(3) To the extent possible, allots Tribal representation based upon the Tribes' proportionate share of the total enrollment in Bureau-funded schools.

The Secretary has determined that the proper functioning of the Committee requires that the Committee be limited to no more than the 25 members recommended by the NRA (5 U.S.C. 565). The Secretary has selected 19 Tribal representatives and 6 Federal representatives for the Committee, for a proposed total of 25 members.

The Secretary finds that the proposed Tribal representatives for the Committee:

(1) Represent a balance of interests that will be significantly affected by the final rules (*i.e.*, parents; teachers; school board members; and administrators of Tribal and Tribally operated contract day schools, grant day schools, grant boarding schools, and peripheral dormitories);

(2) Proportionately represent students from Tribes served by Bureau-funded schools;

(3) Reflect the different varieties of school size, type of school and facility, and geographical location; and



3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: April 28, 2008.

**Tracey Denning,**

*Agency Clearance Officer, Customs and Border Protection.*

[FR Doc. E8–9993 Filed 5–5–08; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5213–N–01]

### Section 8 Housing Choice Vouchers: Implementation of the HUD–VA Supportive Housing Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing.

**ACTION:** Notice.

**SUMMARY:** This Notice sets forth the policies and procedures for the administration of tenant-based Section 8 Housing Choice Voucher (HCV) rental assistance under the HUD–Veterans Affairs Supportive Housing (HUD–VASH) program administered by local public housing agencies (PHAs) that have partnered with local Veterans Affairs (VA) medical centers.

**DATES:** Effective date: May 6, 2008.

**FOR FURTHER INFORMATION CONTACT:** David A. Vargas, Director, Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228, Washington, DC, 20410, telephone number (202) 708–2815. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Special Rules for the HUD–VASH Voucher Program
  - a. Family Eligibility and Selection
  - b. Income Eligibility
  - c. Initial Term of the HCV
  - d. Initial Lease Term
  - e. Ineligible Housing
  - f. Mobility and Portability of HUD–VASH Vouchers
  - g. Case Management Requirements
  - h. Turnover of HUD–VASH Vouchers
  - i. Moving-to-Work (MTW) Agencies
  - j. Project-based Assistance
  - k. Section Eight Management Assessment Program (SEMAP)
- III. Reporting Requirements

#### I. Background

Seventy-five million dollars in Housing Choice Voucher (HCV) program funding will provide rental assistance under a supportive housing program for homeless veterans authorized by section 8(o)(19) of the United States Housing Act of 1937, 42 U.S.C. 1437f(o)(19). The

initiative is known as the HUD–VASH program and was authorized pursuant to Division K, Title II, of The Consolidated Appropriations Act, 2008 (Pub. L. 110–161) (“2008 Appropriation Act”) enacted on December 26, 2007 (see proviso (7) under the heading “Tenant-Based Rental Assistance”). The HUD–VASH program combines HUD HCV rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA) at its medical centers and in the community. Ongoing VA case management, health, and other supportive services will be made available to homeless veterans at as many as 132 VA Medical Center (VAMC) supportive services sites across the nation.

The 2008 Appropriation Act required HUD to “make such funding available, notwithstanding section 204 (competition provision) of this title, to public housing agencies (PHAs) that partner with eligible VA Medical Centers or other entities as designated by the Secretary of the Department of Veterans Affairs, based on geographical need for such assistance as identified by the Secretary of the Department of Veterans Affairs, public housing agency administrative performance, and other factors as specified by the Secretary of Housing and Urban Development in consultation with the Secretary of the Department of Veterans Affairs.”

Based on this language, the VA, in consultation with HUD, identified 132 VAMCs that will participate with the program. In doing so, the VA took into account the population of homeless veterans needing services in the area, the number of homeless veterans served by the homeless programs at each VAMC during Fiscal Years 2006 and FY 2007, geographic distribution, and VA case management resources. There will be at least one site in each of the 50 states and in the District of Columbia and Puerto Rico.

HUD, in consultation with the VA, and in consideration of a PHA’s administrative performance, identified eligible PHAs located in the jurisdiction of the VAMCs and invited them to apply for HUD–VASH vouchers. The number of HUD–VASH vouchers awarded to each PHA was determined by HUD and the VA. Approximately 35 rental vouchers were awarded for each professional, full-time HUD–VASH case manager at the local VAMC. HUD–VASH vouchers may be reallocated in the future based on need and usage. A PHA that participates in the HUD–VASH program must partner with their VASH VAMC. Additional information on program requirements and

procedures may be found on HUD’s Web site at [www.HUD.gov](http://www.HUD.gov).

#### II. Special Rules for the HUD–VASH Voucher Program

This section sets forth the design features of the HUD–VASH vouchers, including the eligibility of families, portability, case management, and the turnover of these vouchers. The 2008 Appropriation Act states “that the Secretary of Housing and Urban Development may waive, or specify alternative requirements for (in consultation with the Secretary of the Department of Veterans Affairs), any provision of any statute or regulation that the Secretary of Housing and Urban Development administers in connection with the use of funds made available under this paragraph (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance: *Provided further*, That assistance made available under this paragraph shall continue to remain available for homeless veterans upon turnover.”

This notice outlines, below, the waivers or alternative requirements determined by the Secretary to be necessary for the effective delivery and administration of the HUD–VASH program. These waivers or alternative requirements are exceptions to the normal HCV requirements, which otherwise govern the provision of HUD–VASH assistance. In addition, a PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program. These requests may be submitted to the Secretary for review and decision through the Assistant Secretary for Public and Indian Housing.

HUD–VASH vouchers under this part are administered in accordance with the HCV tenant-based rental assistance regulations set forth at 24 CFR part 982. In the HCV program, the PHA pays monthly rental subsidies so that eligible families can afford decent, safe, and sanitary housing. HUD provides housing assistance funds to the PHA, as well as funds for PHA administration of the program.

Under the HCV tenant-based program, families select and rent units that meet program housing-quality standards. If the PHA approves a family’s unit and tenancy, the PHA contracts with the owner to make rent subsidy payments (housing assistance payments) directly

to the owner on behalf of the family on a monthly basis. The family enters into a lease with the owner and pays its share of the rent to the owner in accordance with the lease. The housing assistance payment (HAP) contract between the PHA and the owner covers only a single unit and a specific assisted family. If the family moves out of the leased unit, the HAP contract with the owner terminates. The family may generally move to another unit with continued assistance so long as the family is complying with program requirements.

Unless expressly noted below, all regulatory requirements and HUD directives regarding the HCV tenant-based program are applicable to HUD-VASH vouchers, including the use of all HUD-required contracts and other forms. The PHA's local discretionary policies adopted in the PHA's written administrative plan apply to HUD-VASH vouchers, unless such local policy conflicts with the requirements of the HUD-VASH vouchers outlined below.

PHAs are required to maintain records that allow for the easy identification of families receiving HUD-VASH vouchers. PHAs must identify these families in the Public and Indian Housing Information Center (PIC). This record-keeping will help ensure that, in accordance with appropriations renewal language, HUD-VASH vouchers that are in use will remain available for homeless veterans upon turnover.

#### a. Family Eligibility and Selection

HUD-VASH eligible families are homeless veterans. The 2008 Appropriation Act provides for statutory or regulatory waivers or alternative requirements upon a finding by the Secretary that such waivers or alternatives are necessary for the effective administration and delivery of voucher assistance. The December 17, 2007, Explanatory Statement for the 2008 Appropriation Act provides, "The Appropriations Committees expect that these vouchers will be made available to all homeless veterans, including recently returning veterans' (153 Cong. Rec. H16514 (daily ed., Dec. 17, 2007)). HUD, through its undersigned Secretary, finds the following waivers necessary to effectively administer and deliver the program to all veterans in accordance with Congressional intent.

Section 8(o)(19) of the United States Housing Act of 1937 (USHA of 1937), which requires homeless veterans to have chronic mental illnesses or chronic substance use disorders with required treatment of these disorders as a

condition of receipt of HUD-VASH assistance, is waived.

The VAMC will refer HUD-VASH eligible families to the PHA for the issuance of vouchers. Written documentation of these referrals must be maintained in the tenant file at the PHA. Therefore, the PHA will not have the authority to maintain a waiting list or apply local preferences for HUD-VASH vouchers. Accordingly, section 8(o)(6)(A) of the USHA of 1937, 42 U.S.C. 1437f(o)(6)(A), in regard to preferences, has been waived to provide for the effective administration of the program. In addition, 24 CFR 982.202, 982.204, and 982.207, relating to applicant selection from the waiting list and local preferences, are also waived. Sections 982.203, 982.205, and 982.206 regarding special admissions, cross-listing of the waiting list, and opening and closing the waiting list do not apply to the HUD-VASH program.

The VAMC will screen all families in accordance with its screening criteria. By agreeing to administer the HUD-VASH program, the PHA is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies. Specifically, under the HUD-VASH program, PHAs will not have the authority to screen potentially eligible families or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), with one exception. PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, the Department is exercising its authority to waive 42 U.S.C. 1437d(s); 42 U.S.C. 13661(a), (b), and (c); and 24 CFR Sections 982.552 and 982.553, with the exception of 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders.

Civil rights requirements cannot be waived. The HUD-VASH program is administered in accordance with applicable Fair Housing requirements. These requirements prohibit discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability. When disabled veterans are HUD-VASH recipients, HUD's reasonable accommodation standards apply.

#### b. Income Eligibility

The PHA must determine income eligibility for HUD-VASH families in accordance with 24 CFR 982.201.

Income targeting requirements of section 16(b) of the USHA of 1937, as well as 24 CFR 982.201(b)(2), do not apply for HUD-VASH families so that participating PHAs can effectively serve the eligible population specified in the 2008 Appropriation Act; that is, homeless veterans, who may be at a variety of income levels. The PHA may, however, choose to include the admission of extremely low-income HUD-VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

#### c. Initial Term of the HCV

Recognizing the challenges that HUD-VASH participants may face with their housing search, HUD-VASH vouchers must have an initial search term of at least 120 days. Therefore, § 982.303(a), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days. Any extensions, suspensions, and progress reports will remain under the policies in the PHA's administrative plan, but will apply after the minimum 120-day initial search term.

#### d. Initial Lease Term

Under the HCV program, voucher participants must enter into an initial lease with the owner for one year, unless a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice. To provide a greater range of housing opportunities for HUD-VASH voucher holders, initial leases may be less than 12 months; therefore, both section 8(o)(7)(A) of the USHA of 1937, 42 U.S.C. 1437f(o)(7)(A), and 24 CFR 982.309(a)(2)(ii) are waived.

#### e. Ineligible Housing

HUD-VASH families will be permitted to live on the grounds of a VAMC in units owned by the VA. Therefore, 24 CFR 982.352(a)(5), which prohibits units on the grounds of a medical, mental, or similar public or private institution, is waived for that purpose only.

#### f. Mobility and Portability of HUD-VASH Vouchers

An eligible family issued a HUD-VASH voucher must receive case management services provided by the VAMC. Therefore, special mobility and portability procedures must be established. HUD-VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by the partnering VAMC. Since the VAMC will be identifying homeless veterans eligible to participate

in the HUD-VASH program, section 8(r)(1)(B)(i) of the USHA of 1937, 42 U.S.C. 1437f(r)(1)(B)(i), which restricts portability in cases where the family did not reside in the jurisdiction of the PHA at the time of application for HCV assistance, and 24 CFR 982.353(a), (b), and (c), which affects where a family can lease a unit with HCV assistance, do not apply.

**(1) Portability Moves Where Case Management Is Provided by the Initial PHA's Partnering VAMC**

If the family initially leases up, or moves, under portability provisions, but the initial PHA's partnering VAMC will still be able to provide the necessary case management services due to its proximity to the partnering VAMC, the receiving PHA must process the move in accordance with the portability procedures of 24 CFR 982.355. However, since the initial PHA must maintain records on all HUD-VASH families receiving case management services from its partnering VAMC, receiving PHAs must bill the initial PHA. Therefore, 24 CFR 982.355(d), which gives the receiving PHA the option to absorb the family into its own HCV program or bill the initial PHA, is not applicable.

When the receiving PHA completes the HUD-50058 under the scenarios above, the action type that must be recorded on line 2a is "1" for a new admission (a family that is new to the HCV program) or "4" for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). Whether the family is a new admission or portability move-in, in section 12 of the HUD-50058, line 12d is marked "Y," 12e must be 0 since the family must be absorbed, and 12f must be left blank.

**g. Case Management Requirements**

The VAMC responsibilities include: (1) The screening of homeless veterans to determine whether they meet the HUD-VASH program participation criteria established by the VA national office; (2) providing appropriate treatment and supportive services to potential HUD-VASH program participants, if needed, prior to PHA issuance of rental vouchers; (3) providing housing search assistance to HUD-VASH participants with rental vouchers; (4) identifying the social service and medical needs of HUD-VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout this initiative; and (5)

maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

As a condition of HCV rental assistance, a HUD-VASH eligible family must receive the case management services noted above from the VAMC. Therefore, a HUD-VASH participant family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such case, and at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers, to free up the HUD-VASH voucher for another eligible family referred by the VAMC.

**h. Turnover of HUD-VASH Vouchers**

In accordance with the 2008 Appropriation Act, upon turnover, HUD-VASH vouchers must be issued to eligible families as identified by the VAMC, as noted above.

**i. Moving-To-Work (MTW) Agencies**

HUD-VASH vouchers must be administered in accordance with this Notice and are not eligible for fungibility under their MTW agreements. HUD-VASH vouchers must be reported on separately from vouchers under the agency's MTW Agreement.

**j. Project-Based Assistance**

Although HUD-VASH vouchers are tenant-based rental assistance, the Department will consider, on a case-by-case basis, requests from the PHA (with the support of the VAMC) to project-base these vouchers in accordance with 24 CFR part 983.

**k. Section Eight Management Assessment Program (SEMAP)**

Since leasing of HUD-VASH vouchers will be dependent on referrals from the VAMC, the unit months and budget authority associated with these vouchers will not be included in the SEMAP leasing indicator denominator. Therefore, 24 CFR 985.3(n)(1)(i) and (ii) are waived. However, utilization of these vouchers will be monitored separately through HUD systems.

**III. Reporting Requirements**

A new code (VASH) has been established for use on line 2n of the Family Report (form HUD-50058), which provides for an indication if the family participates in "other special programs." The information collection requested on HUD-50058 has been

approved by the Office of Management and Budget (OMB) and given OMB control number 2577-0083. No person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. This code must remain on the HUD-50058 for the duration of the HUD-VASH family's participation in the program. The PHA that administers the HUD-VASH voucher on behalf of the family (initial or receiving PHA under portability) must enter and maintain this code on the HUD-50058.

For any additional systems reporting requirements that may be established, HUD will provide further guidance.

Dated: May 1, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

[FR Doc. 08-1220 Filed 5-1-08; 4:00 pm]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[NV-050-5853-ES; N-82255 and N-84469; 8-08807; TAS: 14X5432]**

**Notice of Realty Action: Classification/ Lease/Conveyance for Recreation and Public Purposes Act of Public Lands in Clark County, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 8.75 acres of public land in Clark County, Nevada. The St. Matthews Baptist Church proposes to use 5 acres of the land for a church, parking area, adult day care, athletic field, children's play area, landscaping, and related facilities. The Solid Rock Christian Church proposes to use 3.75 acres of the land for a house of worship, community learning/not-for-profit day care center, parking, and related facilities. The proposals by these two churches are distinguished as two distinct actions in this notice.

**DATES:** Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until June 20, 2008.



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## Part II

### Department of Housing and Urban Development

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24 CFR Parts 5, 982, and 983

The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs; Final Rule

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 5, 982, and 983

[Docket No. FR-5242-F-02]

RIN 2577-AC83

### The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** HERA, enacted into law on July 30, 2008, made comprehensive and significant reforms to several HUD programs, including HUD's Public Housing, Section 8 Tenant-Based Voucher, and Project-Based Voucher programs. On November 24, 2008, HUD published a notice that provided information about the applicability of certain HERA provisions to these programs. The notice identified: those statutory provisions that are self-executing and required no action on the part of HUD for the program changes made by HERA to be implemented; and those statutory provisions that require new regulations or regulatory changes by HUD for the HERA provisions to be implemented. The notice also offered the opportunity for public comment on the guidance provided. HUD followed the November 2008 notice with a May 15, 2012, rule that proposed to establish, in regulation, the reforms made by HERA solely to the Section 8 Tenant-Based Voucher and Project-Based Voucher programs as discussed in the November 2008 notice, to make other related changes to the regulations, and to further solicit public comment. This final rule conforms the regulations of the Section 8 Tenant-Based Voucher and Project-Based Voucher programs to the statutory program changes made by HERA, makes other related changes to these regulations as discussed in the May 2012 proposed rule, and makes further changes to the two voucher program regulations as a result of issues raised by public comment or as a result of further consideration by HUD of issues pertaining to these programs.

**DATES:** *Effective Date:* July 25, 2014.

**FOR FURTHER INFORMATION CONTACT:** For information about HUD's Voucher programs, contact Michael Dennis, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4228, telephone number 202-402-3882. The address is the

Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background—November 2008 Notice and May 2012 Proposed Rule

HERA (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) made several changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that affect programs administered by HUD's Office of Public and Indian Housing (PIH), including, but not limited to, changes to the definition of income, which also affect the Office of Housing's project-based assistance programs; the public housing agency (PHA) plan; the voucher program; and the capital and operating funds with respect to emergency funds.

*November 24, 2008, Notice.* HUD published a notice in the **Federal Register** on November 24, 2008, at 73 FR 71037, that provided information about the applicability of the 1937 Act provisions amended by HERA to HUD's Public Housing, Section 8 Tenant-Based Voucher, and Section 8 Project-Based Voucher programs. To assist PHAs and assisted housing providers, the notice identified those provisions that are self-executing and required no action on the part of HUD for the program changes to be implemented, and those provisions that require new regulations or regulatory changes by HUD to be implemented. The notice also solicited public comment.

*May 15, 2012, Proposed Rule, Generally.* HUD followed the November 24, 2008 notice with a proposed rule published on May 15, 2012, at 77 FR 28742, for the purpose of: (1) Establishing, in regulation, the reforms made by HERA to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs as discussed in the November 2008 notice, taking into consideration public comment received on the notice, and (2) making other related regulatory changes. In the May 15, 2012, proposed rule, HUD explained that whether the HERA program changes are self-executing or not self-executing, a rule is necessary to ensure that the codified regulations for the programs revised by HERA reflect the HERA changes. In some cases, the regulatory change is simply a conforming change; that is, the regulatory revisions conform the

language of the regulation to the language of the 1937 Act, as amended by HERA. In other cases, however, HUD was required to exercise discretionary authority to determine how the statutory change should be implemented. HUD further explained that with respect to the conforming regulatory changes, a conforming change does not necessarily mean that HUD is adopting in regulation the statutory language verbatim. For purposes of clarity or to give precision to the statutory language or statutory intent, the conforming regulatory change may be worded differently than the statutory language.

*May 15, 2012, Proposed Amendments.* The following presents a brief summary of the key regulatory revisions proposed by the May 15, 2012 rule. A detailed description of all proposed amendments, including correction or updating of regulatory or statutory citations, specific terminology changes, and redesignation of regulatory sections as a result of the inclusion of new sections, and the reasons for the amendments can be found in the preamble to the proposed rule at 77 FR 28743 to 28748.

*Annual Income (24 CFR 5.609(c)(14)).* A conforming change was made to 24 CFR 5.609 to include the Veterans Administration (VA) disability benefits with the exclusion from income for deferred Social Security benefits in § 5.609(c)(14).

*Rent to Owner: Reasonable Rent (24 CFR 982.507).* The procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) or assistance under the HOME Investments Partnerships (HOME) program was streamlined by section 2835(a)(2) of HERA, and the proposed rule revised § 982.507(c) to provide the streamlined process, with the exception of HOME-assisted units. As advised in the May 15, 2012, proposed rule, the rent reasonable applicable to HOME-assisted units would be addressed by separate rulemaking for the HOME program and included a placeholder to cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

*Applicability of the Tenant-Based Voucher Rule (24 CFR 983.2).* The proposed rule removed reference to "cooperative housing" from § 983.2(b)(3). Section 983.2(b) lists the types of situations to which the tenant-based voucher provisions of 24 CFR part 982 do not apply to the PBV program, and paragraph (b)(3) lists the special housing types to which the part 982

provisions do not apply. The inclusion of “cooperative housing” in the list of special housing types to which the part 982 provisions do not apply is incorrect, and HUD proposed to correct this error.

**PBV Definitions (24 CFR 983.3).** The proposed rule added new definitions, and removed and revised others to reflect HERA’s amendment to section 8(o) of the 1937 Act and to remove reference to cooperative housing. In addition, the rule proposed to revise the definition of “existing housing” for the purpose of establishing clear and measurable standards in determining whether a proposed project is eligible for selection as existing housing. The proposed revision was intended to address the potential circumvention of rehabilitation program requirements by selecting a project as existing housing when rehabilitation will be performed on the project shortly after execution of the housing assistance payment (HAP) contract.

**Description of the PBV Program (24 CFR 983.5).** The proposed rule amended § 983.5(c) to provide that although a PHA has the discretion to decide whether to operate a PBV program, the PHA must notify HUD of its intent to project-base its vouchers.

**Maximum Amount of PBV Assistance (24 CFR 983.6).** The proposed rule amended § 983.6 to require advance notification to HUD of the PHA’s intent to project-base its vouchers.

**Special Housing Types (24 CFR 983.9).** The proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program.

**Project-Based Certificate (PBC) Program (24 CFR 983.10).** Section 6904 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, approved May 7, 2007) provides that a PHA may renew or extend PBC housing assistance payment (HAP) contracts as PBV HAP contracts, under certain conditions. The amendment to § 983.10 implemented this change.

**Owner Proposal Selection Procedures (24 CFR 983.51).** The proposed rule revised paragraph (a) of § 983.51 to substitute the term “project” for “building”, consistent with the statutory change made by HERA to section 8(o) of the 1937 Act. Additionally, the proposed rule slightly reworded paragraph (b)(2) to further clarify that a PHA may select, without competition, a proposal for housing assisted under a federal, state or local government housing assistance, community development, or supportive services

program that required a competition for the selection of proposals; that is, the PHA need not conduct another competition.

**Housing Type (24 CFR 983.52).** The proposed rule revised § 983.52, which provides standards by which a unit will be considered an existing unit for purposes of the PBV program, to provide that a unit must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA. The proposed revision also would limit the total amount of work that must be performed to facilitate compliance with HQS to \$1,000 per assisted unit. Additionally, the proposed revision provided that to be considered an existing unit for purposes of the PBV program, the owner must not plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit.

**Prohibition of Assistance for Ineligible Units (24 CFR 983.53).** Section 2835(a)(1)(F) of HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. The proposed rule revised § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

**Prohibition of Excess Public Assistance (24 CFR 983.55).** Section 2835(a)(1)(F) of HERA removes the requirement to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if such a review has been conducted by the applicable state or local agency. The proposed rule, in § 983.55, clarified that the subsidy layering requirements are not applicable to existing housing.

**Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56).** Prior to amendment by HERA, PBV assistance was limited to 25 percent of the units in a building. Section 2835(a)(1)(A) of HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace the term “building” with the term “project,” which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled

families, or a project that serves both categories of families.

**Environmental Review (24 CFR 983.58).** As stated in both the November 2008 notice and the May 2012 proposed rule, HUD noted that any federally required environmental review is “required by law or regulation,” and HUD has not identified any federally required environmental reviews that would be eliminated by Section 8(o)(13)(M)(ii) of the 1937 Act, as added by Section 2835(a)(1)(F) of HERA.

Accordingly, HUD proposed no changes to § 983.58, except to make a minor change to § 983.58(d) to note that the term “release of funds” is defined in § 983.3, which is the definition section.

**PHA-Owned Units (24 CFR 983.59).** The proposed rule added a new paragraph § 983.59 to provide a clarification of the term of the initial and renewal HAP contract that is consistent with section 8(o)(13)(F) of the 1937 Act, which provides that the PHA and the independent HUD-approved entity must agree on the term of the HAP contract and any HAP contract renewal for PHA-owned units. Additionally, the proposed rule removed the requirement that the independent entity approved by HUD to determine initial contract rents to owner must be based on an appraisal by a licensed, state-certified appraiser.

**Housing Quality Standards (24 CFR 983.101).** The proposed rule revised § 983.101 to exclude cooperative housing from the list of special housing types that are inapplicable to the PBV program.

**Purpose and Content of the Agreement to Enter into a HAP Contract (24 CFR 983.152).** The May 15, 2012 rule proposed to clarify § 983.152 by striving to establish a bright-line definition of “commencement of construction” to ensure there is no confusion concerning the requirement that a PHA must enter into an agreement with the owner prior to the start of construction or rehabilitation on a project. The clarification provided that construction commences when excavation or site preparation (including clearing of the land) begins for the housing.

**When Agreement Is Executed (24 CFR 983.153).** The proposed rule clarified when the Agreement, referenced in § 983.153, must be executed.

**Purpose of HAP contract (24 CFR 983.202).** The proposed rule made explicit the existing practice authorized by § 983.153, which is that a HAP contract covers a single project, with the exception of single-family scattered site projects. If an owner has multiple projects, then each project must be

covered by a separate HAP contract under the proposed clarification.

*HAP Contract Information (24 CFR 983.203).* The proposed rule revised § 983.203 to substitute the term “project” for “building”, consistent with the statutory change.

*Extension of Term of Initial Housing Assistance Payment (HAP) Contract (24 CFR 983.205(a)).* The maximum term of the initial HAP contract provided in section 8(o)(13)(F) of the 1937 Act is extended from 10 to 15 years as a result of the amendment to the 1937 Act made by section 2835(a)(1)(B) of HERA, and the proposed rule made a conforming change to 24 CFR 983.205 to reflect the new HAP term.

*Extension of Initial Term (24 CFR 983.205).* The proposed rule made a conforming change to § 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by section 2835(a)(1)(C) of HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

The proposed rule also made a clarifying change to § 983.205(d) to require HUD approval when an owner seeks to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level.

*Proposed Statutory Notice Requirements: Contract Termination or Expiration (Adding a New 24 CFR 983.206).* The proposed rule added a new § 983.206 to address the notification requirements established by section 8(c)(8)(A) of the 1937 Act, as amended by HERA, that the owner must meet.

*HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207).* Section 983.207 (formerly § 983.206) was revised to substitute the term “project” for “building”, consistent with the statutory change made by HERA.

*Owner Certification (Redesignated 24 CFR 983.210).* Consistent with the change to § 983.53 (Prohibition of Assistance for Ineligible Units), the May 15, 2012, rule proposed to revise paragraph (i) in § 983.210 (formerly § 983.209) to clarify that the owner’s certification does not apply in the case of an assisted family’s membership in a cooperative. The proposed rule also added a new paragraph (j) to § 983.210, consistent with the revised definition of “existing housing”, to reflect what constitutes existing PBV housing.

*Removal of Unit from HAP Contract (24 CFR 983.211).* The proposed rule added a new section to define when units are to be removed from the HAP contract. The proposed rule inadvertently stated that this new section clarified existing policy, but in fact the new section reflected a proposed change. In addition, the preamble explanation that the change is already referenced in part 983 was also inaccurate. The preamble language should have been included in the preceding section which discussed the owner certification requirements in § 983.210. New § 983.211 addressed removing a unit from the HAP contract. PHAs receive administrative fees based on the number of units under a HAP contract. If the PHA has not paid a housing assistance payment on behalf of a family for 180 days, the family is no longer considered a participant in the program and, as such, the PHA should no longer receive administrative fees for the unit.

*How Participants Are Selected (24 CFR 983.251(a) and (d)).* In § 983.251(a), the proposed rule clarified the pre-existing policy that restricts owners from leasing to family members or relatives. This section was revised to remove any ambiguity that a PHA may not approve the tenancy of a family if the owner (including a principal or other interested party) of the unit to be leased is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with a disability. The proposed rule also provided that the owner certification, already required under § 983.209, include language that makes explicit that the unit will not be rented to the enumerated list of relatives.

*The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256).* The proposed rule revised § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease, and not simply the initial term. Revised paragraph (f) provides that the lease must allow for automatic renewal after the initial term of the lease. Consequently, the PBV program will provide tenants with long-term leases unless the owner provides a good cause for termination or nonrenewal of the lease.

*Owner Termination of Tenancy and Eviction (24 CFR 983.257).* The proposed rule revised § 983.257 to substitute the term “project” for “building”, consistent with the statutory

change. The proposed rule also removed paragraph (b)(3) from § 983.257, which allows an owner to refuse to renew a lease without good cause upon lease expiration. This change was made for the same reasons the change was made to § 983.256(f), which is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease.

*Continuation of Housing Assistance Payments (24 CFR 983.258).* The proposed rule added a new § 983.258 to clarify that housing assistance payments continue until the tenant rent equals the rent to owner. After 180 days of no subsidy payments being made on behalf of the family, the unit is to be removed from the HAP contract pursuant to § 983.211.

*Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260).* The proposed rule revised § 983.260 (formerly § 983.259) to include the term “project” in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), that if a PHA offers the family tenant-based rental assistance, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family’s voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

*When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262).* The proposed rule revised § 983.262(d) (formerly § 983.261) to substitute the term “project” for “building”, consistent with the HERA change in terminology, and to correct an incorrect regulatory reference. Section 983.262(b) was also revised to clarify existing policy that a PHA, in referring families to excepted units, need not choose between elderly or disabled families, but may refer both.

*Determination of Rent to Owner (24 CFR 983.301).* Section 2835(a)(1)(D) of HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The amendment made by the proposed rule to § 983.301(d) reflects the discretion granted to PHAs.

*Redetermination of Rent to Owner (24 CFR 983.302).* The proposed rule added a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except in the following



situations: (1) To correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to a subsidy layering review; or (3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

**Reasonable Rent (24 CFR 983.303).** The proposed rule revised § 983.303(a) to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision provides that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2).

**Other Subsidy: Effect on Rent to Owner (24 CFR 983.304).** The proposed rule revised § 983.304(e) to clarify that rent reduction is mandatory when the results of a subsidy layering review disclose the need for rent reduction.

## II. Changes Made at the Final Rule Stage

In response to public comment and further consideration of certain issues by HUD, this final rule makes the following revisions to the proposed rule. With respect to changes made in response to public comment, the issues raised by the commenter and HUD's basis for responding to the comments are addressed in Section III of this preamble.

**Rent to Owner: Reasonable Rent (24 CFR 982.507)—Preamble Clarification.** As noted in Section I of this preamble, at the proposed rule stage, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) was streamlined by section 2835(a)(2) of HERA. In the preamble to the proposed rule, at 77 FR 28743, HUD noted that HERA makes several changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. In this preamble to the final rule, HUD clarifies that this provision is applicable only to the Section 8 tenant-based voucher program and not to the Section 8 project-based voucher program.

Additionally, at 77 FR 28743, HUD stated that the rent is to be considered reasonable if the rent does not exceed the greater of: (1) The rent for other

LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance, and (2) the payment standard established by a PHA for a unit of the size involved. However, the more accurate way for HUD to have stated this provision is as follows: "Rent reasonableness is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance." The regulatory text for § 982.507 was stated correctly in the proposed rule and no change is required at this final rule stage.

As advised in the May 15, 2012, proposed rule, the revision to the HOME program is being made by separate rulemaking. Although a final rule making several regulatory amendments to the HOME program was published on July 24, 2013, that rule did not address this issue. Therefore, this final rule will continue to include, as a placeholder, a cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

**PBV Definitions (24 CFR 983.3)—Withdrawn Proposed Revised Definition of "Existing Housing" but Added Revised Definition of "Special Housing Type".** At this final rule stage, HUD determined to withdraw its proposed changes to the definition of "existing housing." HUD leaves in place the currently codified definition of existing housing. Overall, commenters did not favor HUD's proposed changes, and suggested alternatives to HUD's proposal, which are described in Section III of this preamble. Given the many comments on HUD's proposed changes to the definition of "existing housing", HUD has decided to further consider proposed revisions to the definition of "existing housing." HUD will further consider what may be the best metric for determining compliance with HQS; that is, whether HUD should measure the amount of time that must pass from the date of selection to date of compliance, or identify an appropriate dollar standard of the total amount of work that must be performed, or determine some other mechanism. HUD will resubmit for public comment any proposed changes to the definition of "existing housing."

At this final rule stage, HUD is adopting the proposed revised definition of "special housing type" but with one additional change. HUD has revised the definition of "special housing type" to remove reference to cooperative housing.

**Cross-reference to other Federal requirements (24 CFR 983.4) Revision to**

**"Labor standards" cross-reference.** In this final rule, HUD updates the reference to labor standards provisions applicable to assistance under the PBV program to remove the reference to labor standards "applicable to an Agreement" covering nine or more assisted units and substitutes a reference to labor standards "applicable to development (including rehabilitation) of a project comprising" nine or more units. This language clarifies that Davis-Bacon requirements may apply to existing housing (which is not subject to the agreement) when the nature of any work planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project.

**Description of the PBV Program (24 CFR 983.5) and Maximum Amount of PBV Assistance (24 CFR 983.6)—Clarification of Timing of Notification Requirements.** As noted in Section I of the preamble, the proposed rule amended § 983.5(c) and § 983.6 to provide that a PHA must notify HUD of its intent to project-base its vouchers.

This final rule clarifies in § 983.6 that the notification provided by a PHA to HUD of the PHA's intent to project-base its vouchers must be provided before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2). This clarification is also made in § 983.5(c) by cross-reference to § 983.6(d).

**Special Housing Types (24 CFR 983.9).** As noted in section I the proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program. This final rule clarifies the requirements for rental assistance when families lease cooperative housing from cooperative members in § 983.9(c)(3).

**Owner Proposal Selection Procedures (24 CFR 983.51).** In addition to the changes noted in Section I from the proposed rule, HUD is adopting a new paragraph (g) to clarify that an owner proposal selection does not require submission of a Form HUD-2530 or HUD previous participation clearance. Questions are raised from time to time as to the applicability of the previous participation review and clearance procedures and requirements that are codified in 24 CFR part 200, subpart H, to the PBV program. Section 200.213 of these regulations, entitled "Applicability of procedure" correctly lists the HUD programs to which the previous participation requirements apply. The PBV program is not listed as one of the programs governed by these procedures, and nor have the



regulations in 24 CFR part 983 ever cross-referenced to the requirements in 24 CFR part 200, subpart H, to confirm the applicability of these requirements and procedures.

*Housing Type (24 CFR 983.52)—Withdrawn—Proposed Revised Definition of “Existing Housing”.* For the same reasons that HUD is withdrawing its originally proposed definition of “existing housing” in § 983.3, HUD similarly does not adopt the originally proposed definition of “existing housing” in § 983.52. However, in § 983.52, HUD clarifies that units for which rehabilitation or new construction commenced after the owner’s proposal submission but prior to execution of the AHAP do not qualify as existing housing. Changes to the definition of “existing housing” will be addressed through the **Federal Register** notice described under the above discussion of § 983.3.

*Prohibition of Assistance for Ineligible Units (24 CFR 983.53)—Addition of Prohibition on Assistance for Units for which Construction or Rehabilitation Commenced Prior to AHAP.* As noted in Section I of this preamble, HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. Accordingly, the proposed rule revised § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

This final rule adds a new paragraph (d) to § 983.53 to clarify that a PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced, as defined in § 983.152 (discussed below), prior to execution of the AHAP.

*Prohibition of Excess Public Assistance (24 CFR 983.55)—Further Clarification of When Subsidy Layering is Not Required.* As noted in Section I of the preamble, the proposed rule clarified that the subsidy layering requirements are not applicable to existing housing. The final rule revises § 983.55 to add language that further clarifies that a “further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD’s designee has conducted a review, which included a review of PBV assistance, in accordance with HUD’s PBV subsidy layering review guidelines.”

*Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56)—Removal of Substitution of “Project” for*

*“Building” in § 983.56(b)(1)(i).* As noted in Section I of the preamble, HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace the term “building” with the term “project,” which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled families, or a project that serves both categories of families. In response to public comment, HUD agreed with commenters that the terminology for paragraph (b)(1)(i), which addresses when PBV units are not counted in the exception to the 25 percent building cap, was ambiguous. In the final rule, HUD retains the term “building” when used in paragraph (b)(1)(i) to refer to a single-family building.

*Purpose and Content of the Agreement to enter into HAP Contract (24 CFR 983.152)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced.* As noted in Section I of the preamble, the proposed rule clarifies when the Agreement must be executed and defines the start of construction or rehabilitation. The final rule adds a cross-reference to § 983.153 and states that the prohibition on construction or rehabilitation applies after proposal submission.

*When Agreement Is Executed (24 CFR 983.153)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced.* As noted in Section I of the preamble, the proposed rule clarified when the Agreement, referenced in § 983.153, must be executed. The final rule further clarifies that a PHA is prohibited from entering an Agreement when after proposal submission construction or rehabilitation has started prior to the execution of the Agreement.

*Extension of Initial Term (24 CFR 983.205)—Clarification of Additional Extensions beyond Initial Extension of Term.* As noted in Section I of this preamble, the proposed rule made a conforming change to § 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

In response to public comment, the final rule revises this section to clarify that future extensions beyond the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. The final rule amendment further provides that extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term.

In response to public comment, the final rule also amends § 983.205(d) to remove the requirement of notice to and advance approval by HUD when owners decides to terminate the HAP contract, and maintains the existing requirement that owners provide notice to the PHA.

*HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207)—Addition of Language to Specify How to Add Contract Units.* As noted in Section I of the preamble, the proposed rule revised § 983.207 (formerly § 983.206) to substitute the term “project” for “building”, consistent with the statutory change made by HERA. In response to public comment, the final rule revises paragraph (b) to clarify how PBV contract units may be added in the same project. The revision provides that, at the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with § 983.56(b)), or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project.

*Owner Certification (Redesignated 24 CFR 983.210)—Proposed Revision for Existing Housing Withdrawn.* Although, at this final rule stage, HUD is withdrawing its proposed definition of “existing housing” in §§ 983.3 and 983.52, HUD retains proposed new paragraph (j), with certain revisions. As noted above in the discussion of § 983.4, HUD revises the reference to labor standards provisions applicable to assistance under the PBV program to clarify that Davis-Bacon requirements may apply to existing housing when the

nature of any work (including rehabilitation) planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project. Paragraph (j) of the final rule reflects that in such case, it will be necessary for the certification to encompass compliance with Davis-Bacon wage requirements.

**Removal of Unit from HAP Contract (24 CFR 983.211).** As noted in Section I of the preamble, the proposed rule added a new section to define when units are to be removed from the HAP contract. Section 983.211(a) requires that units with families whose income has increased during their tenancy to an amount equivalent to the rent provider to the owner, shall be removed from the HAP Contract. If the project is partially assisted, the PHA may substitute a different unit for the unit removed from the Contract if it is possible for the HAP contract to be amended. In response to public comment, HUD at the final rule stage is providing that if the project is not partially assisted, the unit removed from the HAP contract can be re-instated when the ineligible family vacates. In addition, HUD is clarifying that the PHA may substitute a different unit for the unit removed from the contract when the first eligible substitute becomes available even if at the time a unit is removed another unit is not immediately available to substitute under the HAP contract.

**How Participants Are Selected (983.251(d))—Clarification of Preferences for Services Offered.** In § 983.251(d), the proposed rule substituted the word “qualify” for “need” and added “or in conjunction with specific units.” The language submitted at the proposed rule stage stated that a preference could be provided for disabled families who “qualify for services at a particular project or in conjunction with specific units.” The substitution was proposed on the basis that “qualify” may better convey the intent of this section. However, at the final rule stage and following further consideration of “qualify” versus “need”, HUD is returning to the original language of “need services” out of concern that “qualify for” may be interpreted in such a way to limit the population eligible for the preference. Additionally, HUD is returning to the original language “services at a particular project” out of concern that “or in conjunction with specific units” may be unclear. Although HUD is retaining the language currently codified in HUD’s regulations, HUD will continue to examine the

language of this section and how it may be improved, recognizing that neither term —“ need” or “qualify”—may provide the clear distinction that PHAs are looking for. The best approach to helping PHAs understand the intent of this section may be for HUD to issue guidance that provides examples of how a preference may be structured.

**The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256)—Clarification of Owner Termination of Lease for Good Cause.** As noted in Section I of the preamble, the proposed rule revised § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease.

The final rule clarifies that that if the owner terminates the lease, the termination must be for good cause.

**Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260).** The proposed rule revised § 983.260 (formerly § 983.259) to include the term “project” in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), that, if a PHA offers the family tenant-based rental assistance under the PBV program, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family’s voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

The final rule further clarifies PHA termination of housing assistance payments for wrong-sized or accessible unit by revising paragraph (c) in two respects. Paragraph (c)(1) provides that if the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family’s voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit, and, as clarified in this final rule, if the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family’s voucher, the PHA must remove the unit from the HAP contract.

Paragraph (c)(2) provides that if the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of § 983.260 (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized

or accessible unit, at the expiration of a reasonable period as determined by the PHA, and, as clarified by this final rule, remove the unit from the HAP contract.

**When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262)—Providing PHAs with the Option to Continue to Count an Excepted Unit Based on Elderly or Disabled Family Status, without an Elderly or Disabled Member under Certain Conditions.** As noted in Section I of this preamble, the proposed rule revised § 983.262 (formerly § 983.261) to substitute the term “project” for “building”, and to clarify in § 983.262(b) that a PHA, in giving a preference to excepted units, need not choose between the elderly or disabled families, but may give a preference to both.

This final rule also makes a change to respond to existing concerns with respect to excepted units based on elderly or disabled family status and the loss of occupancy of the unit by the elderly or disabled family member through death, illness, or other circumstances beyond the family’s control. Under current requirements, the family must vacate the unit and the PHA must cease paying housing assistance payments on behalf of the family because they no longer qualify for the excepted unit. The result of such requirements is often displacement of the family during a time when the family is dealing with hardship due to the loss, permanent or temporary of the elderly or disabled family member. The final rule adds a new paragraph (e) to § 983.262 to give PHAs the discretion to allow the family to continue to reside in the excepted unit, and to continue to count the unit as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, then in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family member.

**Determination of Rent to Owner (24 CFR 983.301)—Clarification that the PHA Has the Discretion to Elect in the HAP Contract that Rent to Owner Shall Not be Reduced.** As noted in Section I of this preamble, HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The preamble to the proposed rule noted that HERA did not alter the rent reasonableness requirements of section 8(o)(10)(A), and that therefore these requirements must continue to be met. The proposed rule revised § 983.301(e)

to provide that the rent to owner shall not be reduced below the initial rent, with certain limitations, in accordance with § 983.302(c)(2).

The final rule revises paragraph (e) to clarify that the PHA has the discretion to elect in the HAP contract that the rent to owner shall not be reduced below the initial rent subject to the limitations of § 983.302(c)(2). Accordingly, in this final rule, paragraph (e) provides that the PHA shall determine the reasonable rent in accordance with § 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

*Redetermination of Rent to Owner (24 CFR 983.302)—Further Clarification of When Rent to Owner Shall Not Be Reduced.* As noted in Section I of this preamble, the proposed rule added a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except under certain circumstances. The final rule revises paragraph (c)(2) of § 983.302 to clarify that “if the PHA elected within the HAP contract to not reduce rents below the initial rent to owner,” then the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract except for the “exception” circumstances provided in the regulation.

*Reasonable Rent (24 CFR 983.303).* As noted in Section I of this preamble, the proposed rule revised § 983.303(a) to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision provides that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2).

This final rule further clarifies the comparability requirement of § 983.303(a). Section 983.303(a) is revised to provide that at all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except, as provided in this final rule, where the

PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

### III. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on July 16, 2012, and 22 public comments were received in response to HUD's May 15, 2012 proposed rule. Comments were submitted by individual members of the public, Fair Housing interest groups, housing associations, and public housing authorities. The following presents the significant issues and questions related to the proposed rule raised by the commenters.

A few commenters submitted comments generally about their views of the rule. These comments, for which no response is required, included such comments as the following.

A commenter stated that HUD must “broaden its thinking with regard to administration of the project-based voucher program to recognize the important preservation tool that project-based vouchers are and will continue to be (particularly in light of the new Rental Assistance Demonstration (RAD) program). The commenter stated that, in reading the proposed changes, it was struck by a tension between expanding program use and flexibility with a desire to keep the program the small boutique program that it started out to be. The commenter stated that the tension is understandable in that the project-based voucher program was originally intended to be a very small (and voluntary) program to address tight rental market, but as Congress cuts back on funding for federal housing programs, the ability to preserve the existing housing stock has become more critical and Congress has recognized that it must use its scarce resources to the best outcome (in this case the preservation of a scarce supply of affordable rental housing). Other commenters stated that “the PBV program is an essential component of state and local supportive housing strategies to reduce reliance on restrictive settings which violate the Americans with Disabilities Act, such as state institutions, board and care homes, adult care homes, and nursing homes.” Another commenter recommended that HUD revise the program further to allow greater flexibility to support PBV assistance. The commenter stated that “HUD should lobby to increase the percentage of budget authority for PBV units when the PHA is utilizing PBVs as

replacement housing for public housing.”

The following presents specific issues raised by commenter and HUD's response to the comments.

#### *Issue: Rent to Owner: Reasonable Rent (§ 982.507)*

*Comment:* Commenters stated that HUD's proposed language at § 982.507, regarding the rent reasonableness test, is contrary to statutory intent by limiting the rent to the lesser of the reasonable rent and the payment standard. The commenters repeated the statutory language that states “the rent shall be considered reasonable if it does not exceed the greater of (1) the rent for other LIHTC or HOME assisted units in the project not occupied by families with tenant based assistance, or (2) the payment standard established by the PHA for a unit of the size involved.” The commenters recommend that HUD re-evaluate the proposed language. A commenter stated that Congress also has provided that the rent is *not* reasonable if it exceeds both the rents charged for comparable units receiving tax credits that are not occupied by voucher holders and the PHA payment standard for the unit. The commenter stated that, in other words, if the tax credit rent is \$600 and the payment standard is \$650, a PHA can approve a voucher rent at \$650, subject to a rent reasonableness test. Using this example, HUD could not approve a rent of \$675 because it is greater than the payment standard and the tax credit rent.

*HUD Response:* HUD disagrees with the first commenter's interpretation of the statute. The first subsection in the HERA amendment plainly states that a rent comparability analysis is not required by the PHA if the rent to owner does not exceed the rent for other comparable, non-voucher LIHTC units in the project. However, the second subsection of the HERA amendment is properly read as stating that if the proposed rent to owner will exceed the amount in the preceding paragraph, the amendment does not create an exception to the normal rent comparability requirement in section 8(o)(10)(A) of the U.S. Housing Act of 1937. In addition, the HERA amendment imposes an additional rent cap based on the payment standard in these cases. Therefore, if the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability analysis in accordance with program requirements. In addition, the PHA must cap the rent at the payment standard. The rent to owner in these cases is therefore set at the lesser

of the comparable market rent determined by the PHA and the payment standard.

HUD generally agrees with the commenter that used dollar amounts to illustrate the test that must be performed when the rent requested by the owner is greater than the rents charged for other comparable LIHTC units in the project that are not occupied by voucher families. However, the commenter excluded the possible impact of the required rent comparability analysis performed by the PHA. For instance, if the PHA's comparability analysis determined that the reasonable rent was \$625 that would be the rent to owner, notwithstanding the fact that the payment standard was \$650.

*Comment:* Commenters stated that the statute does not require PHAs "to conduct a rent reasonableness test if the requested voucher rent is at or below the tax credit rent for units not occupied by a voucher holder." A commenter gives an example, stating that "if the tax credit rent paid by unassisted tenants is \$600 and the rent for the voucher unit is \$550, the PHA would not be required to compare the unit rent to unassisted units in the private market — the rent would be deemed reasonable.

*HUD Response:* Rent reasonableness is required to be determined as otherwise provided by paragraph 8(o)(10) of the 1937 Act except that rent reasonableness shall not be required if the voucher rent is equal to or lesser than other comparable LIHTC units occupied by non-voucher families. The statute does not state that such rents shall be "deemed reasonable" as suggested by commenters. Therefore, HUD submits that the statutory language is permissive, and that while HUD may not require a rent comparability determination in the situation described, the statute does not prohibit a PHA from performing such determination if it so chooses.

*Comment:* Commenters stated that the proposed language could result in reducing rents below existing rents and undercut the statute. The commenters recommended that HUD revise the language "to follow the 'greater of' statutory language and avoid the unintended penalty for owners requesting legitimate rent increases that threaten no additional harm to assisted tenants." Other commenters stated that requiring an owner to reduce rent below existing rents would be contrary to HUD's own intentions.

*HUD Response:* Commenters appear to believe the statute states that the rent shall be considered reasonable if it does not exceed the greater of (1) the rent for

other LIHTC or HOME assisted units in the project not occupied by families with tenant based assistance, or (2) the payment standard established by the PHA for a unit of the size involved. The statute actually states that the rent shall not be considered reasonable if it exceeds the greater of (1) the rents charged for other comparable units receiving LIHTC or HOME assistance in the project that are not occupied by families with tenant based assistance, and (2) the payment standard established by the PHA for a unit of the size involved. The statutory language imposes a payment standard cap in addition to the required rent reasonableness test both at the time of initial rent setting and when an owner requests a rent increase. As noted previously, if the rent to owner (at initial rent setting or during rent increases) does not exceed the LIHTC rent for comparable, non-voucher units, a PHA rent reasonableness analysis is not required and there is no payment standard limitation.

*Comment:* A commenter requested that HUD explain why it is adding the additional rent reasonableness requirement and why HERA was able to waive the rent comparison when the rent does not exceed other LIHTC projects but not when the requested rent exceeds other LIHTC rents?

*HUD Response:* HUD has clarified in the preamble that if the requested rent does not exceed the rent for other LIHTC units in the project not occupied by families with tenant-based assistance, that a rent reasonableness determination is not required. HUD believes that the statute is permissive and that a PHA may perform a rent reasonableness comparison in this instance if it so chooses. The statute states that the requirements of 8(o)(10) of the 1937 Act apply including 8(o)(10)(A), which requires that the rent for dwelling units for which a housing assistance payment contract is established under subsection 8(o) of the statute shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market. The HERA amendment does not render the requirement for a rent comparison analysis pursuant to section 8(o)(10)(A) of the 1937 Act inapplicable when the test under section 8(o)(10)(F)(ii) is met. Rent reasonableness requirements pursuant to section (8)(o)(10)(A) continue to apply.

*Comment:* A commenter recommended that HUD clarify "that the HERA policy for determination of 'reasonable rents' for LIHTC units with tenant-based vouchers, incorporated in

§ 982.507(c)(2), does not apply to project-based vouchers."

*HUD Response:* HUD agrees with this comment and in this preamble to this final rule HUD has clarified that the regulatory change is only applicable to the tenant-based voucher program.

*Comment:* A commenter stated that the HUD should leave the existing regulatory language as is because the regulatory language complies with the requirements in HERA and HERA "does not require PHAs to lower PBV owners' rents if/when applicable FMRs decrease by five percent or more, as has been directed by some HUD Field Offices." The commenter stated that the regulation should allow "PHAs to conduct rent reasonableness if warranted, but *not* for PHAs to necessarily lower the existing PBV rent in these circumstances." The commenter stated that "under the circumstances described above, regarding decreases in FMR values of five percent or more, a PHA receives a property owners' annual rent increase request for a given unit but a PHA's rent reasonableness determination justifies a lower PBV rent, than a PHA can lower the PBV rent to the rent reasonable level but not lower than the initial rent. Some HUD Field Office personnel have misinterpreted and/or misapplied the PBV regulations governing reasonable rents in the PBV program, which is why we believe that clarification of the proper implementation of this regulation is welcomed."

Another commenter requested that HUD revise § 982.507(c)(2) to clarify that under HERA PHAs are *not* required to conduct a rent reasonableness determination (in accordance with the existing regulations for Section 8 tenant-based and project-based voucher programs) if the initial rent or rent requested at subsequent intervals, is equal to or less than the rent for other comparable units receiving tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households. The commenter also requested that HUD clarify that "there could be a scenario where the initial rent requested or the rent at intervals during subsequent lease terms would be 'rent reasonable' if it is equal to the greater of (1) the rent for other comparable units receiving such tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households; or (2) a PHA's payment standard for an applicable unit size."

*HUD Response:* The HERA change relates to rents for tenant-based voucher holders in projects with LIHTCs or

HOME units. It does not apply to the project-based voucher program. In addition, the existing regulatory text at § 982.507 also does not apply to the project-based voucher program. The commenters' other concerns are addressed in response to other similar comments stated above.

*Issue: Revised Definition of "Existing Housing" (§§ 983.3, 983.52(a))*

As already discussed in this preamble, HUD is not revising the definition of "existing housing", but nevertheless wants to share the public comments that HUD received on this issue. Commenters responded to HUD's proposal as follows:

*Comment:* Several commenters submitted comments on these sections. A commenter recommended that HUD review the impact of the new limitations on existing housing. The commenter stated that while the previous text defined "existing housing" as any housing that met HQS upon the proposal selection date, the revised language limits existing housing to units that do not require more than \$1,000 in repairs to meet HQS, and requires the owner to certify that planned rehabilitation does not exceed \$1,000 in the first year of the HAP contract. Commenters stated that the proposed time limit and the monetary limit of \$1,000 for performing compliance work are inappropriate.

A commenter stated that this threshold is very low and "does not accurately capture the differences between development and acquisition-only transactions." Another commenter stated that this threshold may discourage owners from conducting voluntary repairs and replacements to achieve greater accessibility and/or energy efficiency. A commenter questioned what an owner should do if a tenant vacates a unit within one year after a HAP contract is executed?

A commenter stated that "an owner should have the ability to do more than \$1,000 worth of work on the unit" because to do a simple "unit turnover"—painting, cleaning and perhaps recarpeting—would cost more than \$1,000." Other commenters expressed concern about the cap when scheduled rehabilitation is required.

A commenter recommended changing the definition to allow PHAs to determine the threshold or in the alternative if HUD determines a threshold is appropriate, a reasonable level based on guidelines and thresholds of other federal funding programs should be considered. "For example, low-income housing tax credits and the FHA loan programs use

higher rehabilitation thresholds of approximately \$6,500 per unit."

Other commenters stated that the new definition is contrary to HUD's new Rental Assistance Demonstration (RAD) program which encourages owners of certain types of assisted multifamily housing with expiring subsidy contracts to convert to PBVs. Commenter stated that many of these projects currently meet HQS but will require additional rehabilitation with tenants in place. Without the flexibility for PHAs to treat these projects as existing housing, as appropriate, many of these proposed preservation transactions will not be feasible.

A commenter stated that the same \$1,000 per unit rehab number was used for Section 8 moderate rehabilitation over 8 years ago and HUD has failed to recognize inflation costs. Additionally, the commenter noted that a scheduled rehabilitation that costs more than \$1,000 to meet HQS standards is not the same as a gut rehab which would require tenants to be displaced. Another commenter stated that the proposed limit will "hamper HUD's ability to implement the recent preservation policy to encourage the conversion of Rent Supplement or Rental Assistance Payments to project-based vouchers. If HUD is indeed focused on preservation of the assisted housing stock, its rules must reflect that commitment."

Commenters stated that this new definition will complicate transactions when eligible residents are already in place and renovations are undertaken or when renovations must be made to new or rehabilitated units that were not originally PBV units. Other commenters stated that the new definition will significantly narrow those units that will qualify as existing housing and negatively impact the preservation of existing housing. A commenter stated that the revised definition is contrary to HERA's goal to reduce regulatory requirements and make it easier to attach PBVs to existing housing.

Commenters stated that "the procedures for rehabilitated housing will delay the initiation of rental assistance, which will create significant cash shortfalls for many preservation transactions which rely on the PBV income stream from "Day One" to support new financing (for rehabilitation and often acquisition, where the property is being transferred). These projects meet HQS on Day One, but may require significant additional rehab (e.g. for energy retrofits and modernization) to satisfy the requirements of lenders and tax credit investors, or to improve long-term sustainability."

Commenters recommended that HUD maintain the current regulatory definition. A commenter also recommended eliminating the second half of the proposed definition. Other commenters recommended deleting the part of "the proposed definition that would eliminate the possibility of rehabbing a property in the first year of the HAP contract and by increasing the per-unit rehabilitation dollar amount for units that need immediate repair to pass HQS." A commenter recommended the proposed definition be amended to allow PHAs discretion "to qualify as existing housing any property that meets (or can readily meet) HQS, regardless of the anticipated level of additional future rehabilitation, where such rehabilitation will be carried out with tenants in place and is necessary and appropriate to extend the remaining useful life of the property as affordable housing." Another commenter recommended maintaining the current definition because the "flexibility has been critical to preserving existing units in communities where affordable rental housing is scarce or units are being lost due to gentrification." Other commenters recommend that HUD preserve and promote the discretion of local PHA's by keeping the current definition.

*Issue: Revising the "PHA Owned Unit" Definition (§ 983.3)*

*Comment:* Commenters stated that the proposed rule failed to address the definition of "PHA Owned Unit" and stated that the current definition causes continued confusion to industry participants, HUD, and HUD's Office of Inspector General (OIG). A commenter stated that the purpose of distinguishing PHA-owned units in the regulation is to prevent self-dealing by PHAs where they both own and administer voucher assistance for a given unit, and that the existing definition is unnecessarily broad and in some cases has led HUD to consider units as PHA-owned where the PHA is merely a ground lessor or a mortgagee, but does not exercise control over the project itself. The commenter stated that when a unit is deemed PHA-owned, then the regulations at § 983.59 apply. Another commenter stated that these require the engagement and compensation of an independent entity, rather than the PHA, for certain functions, including inspections and rent reasonableness determinations. Another commenter recommends tightening the definition so that the § 983.59 requirements apply only in those situations where the PHA controls the project and there could actually be

a conflict of interest in a PHA performing those functions itself.

A commenter also recommended that the definition require an independent entity to be involved when a PHA is both the owner and the voucher administrator.

Some commenters stated that HUD's definition is so broad that PHAs are determined to "own" a property regardless if they have no control over the property operations. The commenters recommended that HUD tighten the definition to ensure that ownership equates with having control over the property and an actual conflict of interest exists.

Other commenters recommended using the following definition "PHA-owned unit means a unit in a project that is owned by the PHA, by a PHA instrumentality, or by a limited liability company or limited partnership in which the PHA (or PHA instrumentality) holds a controlling interest in the managing member or general partner."

*HUD Response:* HUD appreciates the commenters' recommendations concerning the definition of PHA-owned units. However, HUD has not proposed changes to the definition, and believes that the changes proposed by the commenter should undergo public comment before HUD adopts any such change.

*Issue: New Definition of "Release of Funds" (§ 983.3)*

*Comment:* A commenter stated that the revised "release of funds" would allow HUD to issue a release of funds in lieu of use of form 7015.16 (Authority to Use Grant Funds) but stated that form 7015.16 is just one manner in which a release funds can be effectuated. The commenter recommended that the definition be revised to reference solely a "release of funds" or "a release of funds in accordance with [24 CFR] Part 58." Another commenter recommended removing the requirement that a specific type of "Letter to Proceed" be used, which "would facilitate PHA and owner efforts to combine project based voucher (PBV) assistance with other forms of HUD funding in one Part 58 clearance."

*HUD Response:* The reason for the proposed change was to translate the function of form 7015.16 to actual program operations. The form grants authority to use grant funds. Issuance of a Letter to Proceed more accurately reflects the transaction since Section 8 funding under the voucher program is not provided in grant form.

*Issue: Revised Definition of "Special Housing Type" (§ 983.3)*

*Comment:* A commenter recommended that, as a conforming change to the rule, HUD remove reference to "cooperative housing."

*HUD Response:* HUD agrees with this comment, and the final rule removes the reference to cooperative housing from the list of housing types inapplicable to the PBV program.

*Issue: Adding a Definition of "Financial Closing" (§ 983.3)*

*Comment:* A commenter recommended that HUD add a definition of "financial closing" in order to bring clarity to when an AHAP should be executed. The commenter stated that typically, an AHAP is executed at the financial closing of the construction financing as a condition of the lenders and investors of the project, who are depending on the commitment of the PBV assistance." The commenter recommended the following language: "A financial closing occurs once all of the construction financing for a project is in place and the legal documentation committing the financing to the project has been executed."

*HUD Response:* HUD appreciates the commenter's recommendation to add a definition of financial closing to the PBV definitions. However, HUD believes that such a definition is not one that should be adopted at a final rule stage but should first undergo some measure of public comment prior to adoption.

*Issue: Description of the PBV Program & Maximum Amount of PBV Assistance (§§ 983.5, 983.6)*

*Comment:* A commenter stated that the information being sought have long been required in a PHA Annual Plans by way of HUD guidance, and the commenter referenced PIH notice, PIH 2011-54, September 20, 2011. The commenter requested that HUD explain why such information is now being requested as part of this rule. The commenter recommended that § 983.5 be revised to require that a PHA "include in its PHA plan the projected number of PBV units, their general locations and how project basing would be consistent with the plan."

Another commenter recommended deleting the language added at § 983.6(d) because the language adds administrative burden and HUD already has appropriate reporting mechanisms in place for PHAs. Additionally, the commenter stated that the collection of information only at the beginning of the PBV program is ineffective and the PHA

plan already requires information on PBVs. The commenter recommended that HUD "amend Part 903 or the Agency Plan template."

Other commenters recommended that HUD include in the section that the PHA include the required information in the PHA Plan.

*HUD Response:* HUD agrees that the language as proposed is unclear. HUD is seeking to obtain the information required under § 983.6 prior to the selection of individual PBV proposals. Such information is not collected through any other HUD system, and the collection is necessary to ensure that PHA's are not exceeding the 20 percent statutory limitation on the amount of annual budget authority a PHA may project-base. As such, § 983.6 is revised, at this final rule stage, to require that a PHA submit the requested information to HUD before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2), including information on the impact the selection will have on a PHA's annual budget authority.

*Issue: Applicability of Owner Proposal Selection Procedures to Public Housing Revitalization and Replacement Efforts (§ 983.51(b))*

*Comment:* A commenter stated that it supported the change to allow owner selection without a competition in connection with "public housing improvement, development or replacement efforts." The commenter stated it would constitute an "important administrative streamlining in complex public housing revitalization processes, without appreciatively affecting competitive opportunities for receipt of PBV."

*HUD Response:* HUD believes that the commenter misunderstood HUD's intent. Neither the proposed nor this final rule makes the change stated by the commenter. Neither does the rule make changes to the section that prohibits the attachment of PBV assistance to public housing units. The proposed rule simply reiterates the basis for the requirement.

*Comment:* Commenters recommended dropping "the requirement that a prior competitive selection process not involve any consideration that the project would receive PBV assistance." The commenters stated the language is unclear and creates obstacles for owners. A commenter recommended the language be revised by deleting ", and the earlier competitive selection did not involve any consideration that the project would receive project-based assistance." Another commenter stated that this requirement is overly burdensome because it puts "PHAs and

owners in an untenable position since they cannot compete for vouchers without tax credits and cannot compete for tax credits without PBV assistance.” The commenter stated if deleting the requirement is not accepted than the language should be limited to instances “in which points were awarded for the inclusion of such vouchers.”

**HUD Response:** Deleting the restriction would allow for the inclusion in a competitive selection process that a project will receive PBV assistance prior to an actual PBV selection. HUD believes that accepting the commenters’ suggestion would lead to the distortion of both the competitive nature of the PBV program and the legitimacy of the rationale allowing for the selection of units that have undergone other recent legitimate competitive selections. Eliminating the requirement, as suggested, would give an advantage to prospective PBV project owners in the competitive selection upon which a PHA is relying to select units under the PBV program which would result in a HUD program requirement that could possibly taint the outcome of another Federal, State or local housing program. HUD therefore declines the commenters’ recommendation to remove the current regulatory language.

**Comment:** Commenters recommended that HUD “change the current requirement for a local competitive process in instances where a PHA will attach project-based vouchers to units in which it has an ownership interest as part of an initiative to improve, develop or replace a public housing property or site, provided that the PHA includes the initiative in its PHA Plan.”

The commenters stated that: “In this narrow circumstance where a PHA desires to control the revitalization or replacement of its public housing through the use of PBVs for its own units, the requirement to conduct a competitive process is unlikely to be cost-effective and will add delay and uncertainty to critical public housing revitalization efforts.” The commenters specifically recommended providing three options, and suggested the following language for the third option: “(3) Selection of a proposal without a competitive process for PHA-owned housing as part of an initiative to improve, develop, or replace a public housing property or site.”

**HUD Response:** HUD appreciates the commenters’ recommendation. However, these changes were not offered at the proposed rule stage and HUD believes that they should first undergo public comment before adopting the commenters’ suggestions in a rule for effect. HUD, however, will

consider the commenter’s recommendation if HUD decides to propose a substantive change to the competitive selection requirements in future rulemaking.

*Issue: Restrictions on Using PBVs in Public Housing (§§ 983.51(d), 983.54(a))*

**Comment:** Commenters expressed concern and recommend that HUD clarify the current language restricting the use of PBVs in public housing because it could be interpreted to prevent the combining of public housing capital funds (including HOPE VI) with project-based vouchers. The commenters stated that the current language is contrary to the goal of preservation and believes that this was not HUD’s intended outcome.

A commenter recommended that the existing regulation be revised to prohibit the use of PBV assistance with units that receiving public housing operating funds only, revise the final sentence of § 983.51(e) to read as follows: “Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds.” and revise § 983.54(a) to read as follows: “Units receiving public housing operating funds.”

**HUD Response:** HUD appreciates the commenters’ concern, however, the concern has been previously addressed by the Department in the 2005 PBV Final Rule, 70 FR 59892, 59900. The Proposed Rule and this Final Rule simply restate HUD’s longstanding legal interpretation on using project-based voucher assistance in public housing units. Therefore, as stated in the 2005 PBV Final Rule, HUD reiterates that Congress’ adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the 1937 Act. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate fiscal year (FY) 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, proration must occur. For example, if a project receives \$2,000 in non-public housing HOPE VI funds and \$1,000 in

Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program.

*Issue: New Language Allowing PHAs Greater Flexibility (§ 983.51)*

**Comment:** A commenter recommended that HUD add a paragraph (g) to this section that would allow the number of “units under a HAP contract to be increased up to the number awarded on the proposal selection date without an additional competitive selection” at any time. The commenter stated that this change will help stabilize projects and provide long-term affordable housing when owners lose units for no fault of their own, including over-income tenants and wrong-sized families, and that the change is crucial because the regulations at § 983.211 and § 983.258 clarify that a unit must be removed from the HAP Contract if a unit is over-income or otherwise not eligible, but § 983.207 only allows the addition of a unit within three years of the execution of the HAP Contract.

Another commenter stated that to the extent that a unit loses subsidy for no fault of the owner, the regulations should clarify that the unit can be included in the HAP Contract upon lease-up of a subsequent eligible resident. The feasibility of projects is based upon the commitment of a certain level of PBV assistance during the full term of the HAP Contract. In order to preserve the affordability of the projects, the PHA must be able to provide the originally committed level of assistance when the amount of subsidy is decreased through no fault of the owner. The commenter recommended the following language “Once a PBV proposal has been selected pursuant to this section, the PHA may increase the units under the HAP contract up to the number of units originally awarded upon the proposal selection.”

**HUD Response:** HUD appreciates the commenters’ recommendation. However, similar to HUD’s response to recommendations to change the procedures governing an owner’s proposal selection for public housing revitalization and replacement efforts, HUD believes that these changes should first undergo public comment before adopting the commenters’ suggestions in a rule for effect. If in a future rulemaking HUD proposes a substantive change to the competitive selection



requirements, the recommendations of the commenters will be considered.

*Issue: Subsidy Layering Review Not Required for Existing Housing (§ 983.55)*

*Comment:* A commenter recommended that HUD clarify the change to § 983.55(a) by inserting a period after “existing housing” and making the “nor” clause into a separate sentence.

*HUD Response:* HUD agrees with the commenter and the final rule clarifies the sentence as suggested by the commenter.

*Issue: Cap on Number of PBV Units in Each Project (§ 983.56)*

*Comment:* Commenters stated that § 983.56 is unclear in regard to the types of units excluded, such as single family project units, and requests clarification in how to apply the 25 percent cap to PBV units in a project. A commenter stated it is unclear “in the context of a project that may combine multifamily structures with structures containing one or two units. The rule was previously understood to exclude from the general calculation any building of less than four units, and we would suggest clarifying the rule to continue this practice.”

*HUD Response:* HUD agrees with the commenter and in this final rule does not contain the proposed change to replace the word building with project in § 983.56(b)(1)(i).

*Comment:* A commenter recommended the following language, “Combining exception categories. Exception categories in a multifamily housing project may be combined, such that excepted units in a single project may include elderly families, disabled families, and families receiving supportive services, or any combination thereof. Additionally a project may include excepted and non-excepted units (i.e., only those units over the 25 percent per-project cap must be excepted units).”

*HUD Response:* HUD believes the intent of the regulation is adequately discussed in the preamble and does not believe further revision to the proposed regulatory text is necessary.

*Issue: Termination of Rental Assistance for Families in “Excepted” Properties That No Longer Qualify for Benefits (§§ 983.56(b)(2)(ii)(B)&(C), 983.257(c), 983.261(d))*

*Comment:* Commenters stated that the rule leaves “unchanged, provisions in three current sections pertaining to project-based units that are “excepted” from the 25 percent per-property cap on voucher project basing . . . that requires

remaining members of a family that no longer qualifies for elderly or disabled family status to vacate their home.” Commenters stated that these provisions are contrary to other provisions, such as allowing families to remain in homes at the end of a FSS contract, contrary to VAWA, and contrary to HUD policy, and the commenter, as an example, referenced HUD’s policy for allocating VASH vouchers in the event of domestic violence. HUD–VASH Qs and As, No. D.4.”

*HUD Response:* HUD agrees with the commenters that family members residing in a unit that no longer qualifies for elderly or disabled family status should not be required to vacate the unit under conditions that are beyond the control of the family, and Section II of this preamble advises of the change that HUD is making at this final rule stage to address this concern.

*Comment:* Commenters stated that the rule requires that to maintain occupancy the occupants must work, a requirement that is counter to the principle that housing should be voluntary, and the commenter references Notice PIH 2011–33, dated as recently as June 24, 2011, which provides that “Under no circumstance may a PHA terminate assistance from the public housing program as a consequence of unemployment, underemployment, or otherwise failing to meet the work activity requirement for a particular public housing development.”

Commenters recommended that the PBV termination rule be removed or HUD should “[p]redicate such terminations on the availability of tenant-based vouchers so that a family can move with continued assistance (similar to the policy that applies to over-or under-housed families at § 983.259 and that applies to public housing families at Notice PIH 2011–33); or if the property is partially assisted, allow the family to remain, substituting the housing assistance contract of their unit with another unit, if available, as is currently allowed at § 983.261(d).” Another commenter stated: “If the property is fully assisted, allow the family to remain but when the family vacates the new tenant would be subject to the requirements that apply to “excepted” units.”

*HUD Response:* The statutory exception to the 25 percent limitation on dwelling units receiving assistance under a PBV contract specifically requires that families receive supportive services. If a family continues to reside in an excepted unit after failing, without good cause, to complete the service requirement, the unit must be removed from the HAP contract since it only

qualifies as an excepted unit if the family is receiving supportive services.

The service requirement is a condition of occupancy of the PBV unit and is a family obligation contained within the Statement of Family Responsibility that must be signed prior to leasing the unit. A family’s failure to complete the service requirement, without good cause, is considered a violation of family obligations and grounds for termination from the program.

HUD disagrees that the service requirement is a work requirement. Occupancy in a unit excepted from the 25 percent limitation on PBV units in a family project is not based on employment, but rather the statute provides that the exception is allowed for units leased by families receiving supportive services.

*Issue: Environmental Review for Existing Structures (§ 983.58)*

*Comment:* Commenters expressed disagreement with HUD’s interpretation of the statutory language (Section 2835(a)(1)(f) of HERA). Commenters stated that the current interpretation renders the HERA provision meaningless. Another commenter stated that “HERA specifically provided that PHAs would not be required to undertake environmental reviews of an existing structure ‘except to the extent that such a review is otherwise required by law or regulation.’” Other commenters stated that “HUD should have interpreted the phrase ‘otherwise required’ as required by a law or regulation related to other funding for the units.”

A commenter stated that HUD’s interpretation violates principles of statutory construction by rendering the language superfluous, and HUD’s failure to implement the statute accurately has caused PHAs additional administrative burdens, “particularly for PHAs using Project-Based Vouchers for substantial numbers of existing units on different sites.”

A commenter recommended that HUD replace § 983.58(c), with the following: “(c) *Existing housing.* Existing housing under this part 983 is exempt from environmental review, unless required by law or regulation related to funding for the units other than PBV assistance. If an environmental review is required, the RE [responsible entity] that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review



under the laws and authorities listed in 24 CFR 58.5.”

**HUD Response:** Section 2835(a)(1)(F) of HERA adds section 8(o)(13)(M)(ii) to the 1937 Act and specifically relieves PHAs from undertaking any environmental review before entering into a HAP contract for an existing structure, except to the extent such a review is otherwise required by law or regulation. A number of broadly applicable Federal statutes, executive orders, and regulations require environmental reviews of various types to be performed by Federal agencies prior to agency actions, including approving Federal assistance for a project. In the case of Section 8, Section 26 of the 1937 Act provides for the assumption by a state or unit of general local government of these environmental review responsibilities. Contrary to the commenters’ insistence that HUD’s interpretation of the statute renders it meaningless, Section 8(o)(13)(M)(ii) simply does not relieve a state, unit of general local government, or HUD of these responsibilities to undertake an environmental review of existing projects prior to execution of a HAP, and does not authorize HUD to declare such projects exempt from environmental review.

**Comment:** A commenter stated that the environmental review should be limited for existing PBV to situations where such review is required by funding sources for the units other than PBV. The commenter stated that this step will eliminate the need for PHA efforts that do not contribute significantly to environmental protection or the well-being of residents, as Congress intended.

**HUD Response:** Environmental reviews on existing projects are appropriately less extensive than for new construction, and include evaluation of factors such as flood hazards and site contamination that do affect the well-being of residents.

**Issue: New Language for PHA Owned Units (§ 983.59)**

**Comment:** A commenter recommends that HUD add language “to allow PHAs to pass the costs of the PBV program to the owners and remove the requirement that an independent entity must approve a renewal.” The commenter states that PHAs have actual expenses in providing PBV assistance which are not covered by administrative fees, and that therefore, the “regulations should make clear that the PHA may pass those costs on to the owner to be paid as operating costs of the project, provided that the payment of the tenant shall not be increased. Additionally, since an

independent entity is already approving the amount of assistance and the inspection of units, we do not believe that the independent entity is necessarily best suited to determine the appropriateness of renewals.”

Another commenter suggested that § 983.59(b) be deleted and the following language replace paragraph (d)(1). “The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services; provided, however, that the PHA may pass such costs on to the owner to be paid as an operating cost of the project.”

**HUD Response:** The suggested changes involve statutory requirements and therefore cannot be accepted. Section 8(o)(13)(F) of the 1937 Act requires that for PHA-owned housing, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by HUD in the manner provided under section 8(o)(11) of the 1937 Act. Section 8(o)(11) provides that the agency is responsible for payments for determinations made by the unit of general local government or other approved HUD entity.

**Issue: Elimination of an Independent Real Estate Appraisal (§ 983.59)**

**Comment:** A commenter stated that the proposal “to eliminate the current requirement for a real estate appraisal to determine initial contract rents to a Section 8 building owner” is misguided and HUD provides unsubstantiated evidence for the proposed change. The commenter recommended that the provision be deleted from the final rule and HUD should maintain the appraisal requirement.

Another commenter stated that there are certified appraiser readily available, citing that “as of December 31, 2011, the number of active real estate appraisers in the U.S. stood at 86,800. Of this figure, approximately 30 percent, or 26,000, are classified as Certified General Real Property Appraisers.” Another commenter stated that appraisers provide timely services, with research indicating appraisal times have stayed relatively constant, and cost competitive services, reports indicating costs have declined over the years. A commenter recommended that HUD clarify what data or research supports the conclusion that certified appraisers are not readily available, do not provide timely service, and do not provide cost competitive services.

Another commenter stated that “it is in the best interests of the Department and taxpayers that the contract rents [paid] to building owners be based on *independent* and *objective* market information. This information is best provided by qualified real estate appraisers. Real estate appraisers are trained to provide the information sought by HUD in an objective and independent manner. We believe doing otherwise actually puts the limited funds set aside for Section 8 vouchers at risk.”

**HUD Response:** Based on the commenter’s concerns that rents for PHA-owned units will not continue to be determined through a state-certified appraiser and, therefore, determinations will lose objectivity, HUD believes that the same objective can be achieved through rent reasonableness determinations by an independent entity. This requirement was only administratively imposed and because the same results can be achieved otherwise, HUD is eliminating the requirement as proposed.

**Issue: Eliminate Requirement That an Independent Entity Inspecting PHA Units Furnish a Copy of Each Inspection Report to the HUD Field Office (§ 983.103)**

**Comment:** A commenter stated that “there is no evidence that this paperwork-generating requirement has resulted in better unit conditions.” The commenter recommends deleting in § 983.103(f)(2) the language: “and to the HUD field office where the project is located”.

**HUD Response:** HUD has not proposed a change to § 983.103(f)(2). Nonetheless, to address the commenter’s concern, HUD believes there is value in the requirement in that it furthers the statutory intent to provide independent oversight of PHA owned housing in certain areas of program administration.

**Issue: Commencement of Construction (§§ 983.152, 983.153)**

**Comment:** Commenters responded to HUD’s request for comments on the applicability of the commencement of new construction requirement for projects receiving other federal funds on which construction has already started. Commenters stated that this change would have an impact on all possible new owners that are interested in a PBV property after construction has begun rather than just those receiving other federal funds. A commenter stated “that it is not uncommon for site preparation to have begun before a developer submits a proposal for funding. The

proposed 'commencement of construction' standard eliminates a funding agency's opportunity to influence a developer to incorporate PBV units into the development after its selection. Beyond foreclosing opportunities to incorporate PBV units into a development, it is not apparent that this definition of commencement of construction serves a useful purpose." A commenter recommended that HUD provide "the greatest flexibility allowed by law for owners and PHAs to enter into AHAPs, even after the proposed definition of 'commencement of construction.'"

Another commenter stated that it recognized the necessity of complying with NEPA and not commencing work prior to completion of environmental reviews, but stated that it sees "no other HUD objective served by this rule that could not be accomplished by far less restrictive means." Other commenters stated that the complexity of financings and regulatory requirements requires flexibility for developers and finances during the process, especially when a project doesn't initially rely on PBV. A commenter stated that the layering of financing is subject to HUD workload constraints and consequent delays that have severely impacted the ability of projects to meet placed-in-service (PIS) deadlines. Another commenter stated that HUD could require that the environmental review be completed prior to "early start activities" and that they are in accordance with other applicable federal requirements, such as Davis-Bacon wage standards and Section 3 hiring requirements, without requiring an executed AHAP contract. The commenter recommended a simple "certification from the owner (with HUD's standard text regarding potential penalties for false statements) that all work performed prior to AHAP execution has been so performed. If a PHA requests the early release of funding for early start work, HUD may require such a certification at that time."

Several commenters stated that there seems to be no apparent policy rationale offered for HUD's position and recommended revising § 983.152(a) to allow an exception for extenuating circumstances. Commenters stated that they recognized the need that all part 983 requirements be met, but stated that the PHA can certify to those requirements without HUD concerning itself with the timing of executing the AHAP contract.

A commenter stated that the recommended definition will severely limit the use of the PBV program and "does not reflect the realities of how the development process works, and is not

necessitated by any regulatory requirements." Another commenter recommended that HUD tie the execution of the AHAP to the financial closing for the construction or rehabilitation work, provided the PHA has certified the owner has met the other HUD requirements. Specifically, the commenter suggested § 983.152(a) be revised as follows: "Requirement. The PHA must enter into an Agreement with the owner upon financial closing. The Agreement must be in the form required by HUD" and that § 983.153(c) be revised to read as follows: "Prompt execution of Agreement. The Agreement must be executed after the subsidy layering and environmental approvals are received from HUD at financial closing."

*HUD Response:* The determination of start of construction is necessary to ensure that units are constructed or rehabilitated in compliance with section 12(a) of the 1937 Act, and Davis-Bacon wage rates, where applicable. The Section 8 program, including the PBV program, is subject to statutory labor standards provisions in Section 12(a) of the 1937 Act. Section 12(a) of the U.S. Housing Act requires the applicability of Davis-Bacon prevailing wages to the development of low-income housing projects containing nine or more Section 8-assisted units, where there is an agreement for Section 8 use before construction or rehabilitation is commenced. HUD's position has long been that once a Section 8 housing project has been initially developed and placed under a HAP contract, a later decision by an owner to repair or rehabilitate the project as it ages does not constitute "development" of the Section 8 project and is not subject to Davis-Bacon wage rates. However, construction, including rehabilitation work, performed in connection with the initial placement of a project under a PBV HAP contract constitutes development of the project and is subject to Davis-Bacon wage rates where the project contains nine or more assisted units.

The final rule provides a clear definition of start of construction and rehabilitation, and requires that no construction or rehabilitation can proceed after proposal submission and prior to an AHAP being executed. After AHAP execution all construction and rehabilitation must be carried out in accordance with the AHAP and program requirements which may include Davis Bacon wage requirements.

*Issue: Extension of Initial Term (§ 983.205)*

*Comment:* Several commenters expressed disagreement with HUD's interpretation that the PBV contract must end after a 15-year renewal. A commenter stated that HUD's interpretation is contrary to the statute and proposed the limit be for a maximum of 30 years. The commenter stated that the extension contracts need to continue to give homeless people more protection.

Other commenters stated that HUD should comply with the spirit of the original PBV statute which refers to long-term affordability and unlimited number of extensions of the initial HAP contract for up to 15 years. Other commenters stated that continued renewals are extremely important to ensure long-term affordability and is essential to preserving the stock of housing affordability to extremely low income people.

A few commenters stated that the language as written is confusing. The commenters asked "Is HUD attempting to limit the entire term of the contract to 30 years? In other words, if a PHA provides a 15 year initial HAP contract with an agreement to extend for another 15 years, HUD will disallow any further extensions?"

A commenter stated that it seeks clear language that allows for multiple renewals of 15 year terms so not to lose the already limited inventory of affordable housing to the market.

Other commenters stated that the proposed rule violates the explicit HERA amendment, which permits an advance agreement for a potentially unlimited number of 15-year extensions so long as the property meets HQS and the rents do not exceed applicable limitations. A commenter recommended removing sentences two and three, and replacing sentence one as follows: "A PHA may agree to enter into *one or more extensions* at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families."

A commenter recommended that HUD remove sentences two and three, and replace the first sentence as follows, "A PHA at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families."

Another commenter stated that § 983.205(b) should be revised to “clarify that HAP contracts may be extended for up to 15-year terms, with no stated limit on the number of extensions.”

A commenter stated that the statute gives the PHA the authority to extend the contract “upon a PHA’s informed judgment about what is reasonably appropriate in order to achieve long-term affordability of the housing or to expand housing opportunities.” The commenter also stated that “Congress’ use of the word ‘terms,’ and use of the word ‘each’ to modify 15 years, demonstrates that Congress’ statutory language in HERA was *not* intended to limit a PHA to extend PBV HAP contracts to a ‘term’ of up to 15 years exclusively.

Another commenter recommended removing the language at the end of § 983.205 and using the following language: “*Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for additional terms of up to 15 years each if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.”

**HUD Response:** The proposed rule allows for an extension at the beginning of the initial HAP contract term. Essentially, an initial 30-year commitment is permissible at the commencement of the HAP contract provided the PHA is able to make the requisite determination that an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. A 15 year initial term and a 15 year extension is consistent with requirements under LIHTC program under which the project owner must agree to maintain an agreed upon percentage of low income units for an initial 15 year compliance period and subsequent 15-year extended use period. The required LIHTC extended use period ensures that a 15-year PBV extension is appropriate to continue providing affordable housing for low-income families. The HERA amendment, and HUD’s reasonable implementation of it, facilitates preservation of affordable housing for the LIHTC compliance period and extended use period. In addition, provided that the PBV program is not repealed, owners and PHAs will have the opportunity at the end of the 30 year

period to go beyond 30 years of assistance (HUD uses LIHTCs as an example since LIHTCs are the main source of financing used with PBVs. The Department is not asserting that because the LIHTC period is 30 years, this is dispositive on how long extensions may be). HUD’s initial limitation on contract extensions is not intended to bar the possibility for future extensions.

The final rule therefore allows for future extensions at the end of any extension term provided that not more than 24 months prior to the expiration of any extension contract, the PHA agrees to an extension of the term at the end of the previous term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. HUD is, exercising its discretion to establish a reasonable limit on the cumulative term of any contract extension in this manner because HUD believes allowing a PHA and owner to extend a HAP contract for an endless number of terms during the initial HAP contract, as suggested by some commenters, may conflict with the PHA’s statutorily required determination that must be made prior to extending the underlying contract both initially and for subsequent extensions.

**Issue: Terminating a HAP Contract When a Rent Reduction Falls Below Initial Rent Level (§ 983.205)**

**Comment:** A commenter requested that HUD clarify why it is requiring, given there is no statutory requirement, for “an owner seeking to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level would be required to provide a notice to the PHA and HUD and seek HUD approval.” Another commenter stated that the continued allowance that an owner can terminate a contract if a rent reduction is below the initial rent level creates a conflict with § 983.302. The commenter recommended changing § 983.302(c)(2) to include an “a requirement that the owner accept the regular, tenant-based voucher of a prior PBV tenant. The use of a voucher in the unit would be subject to regular HCV rules of rent reasonableness and HQS compliance. But if an owner opts out of a PBV contract rather than accept a rent reduction, the PHA finds the rent to be reasonable, and the tenant wants to remain and pay the likely additional rent above the PHA payment standard, HUD’s rules should encourage such stability.”

**HUD Response:** The regulation reflects an existing requirement. Under

the May 15, 2012, rule, HUD proposed that the owner provide notice to HUD, as well as the PHA, and receive approval from HUD when terminating the HAP contract due to a rent reduction causing rents to fall below the initial rent level. Upon further consideration, HUD withdraws its proposed change and maintains the current regulatory language. A commenter stated that there is a conflict between the existing regulation of allowing the owner to terminate the contract if a rent reduction causes the rent to fall below the initial rent level, and § 983.302. HUD disagrees since in limited circumstances, as enumerated in § 983.302(c)(2) the rent to owner may be required to be reduced below the initial rent (e.g., if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to the prohibition of excess public assistance (see § 983.55)). The commenter also suggests that HUD require an owner to accept a regular voucher when the owner exercises the right to terminate assistance in accordance with (§ 983.205). HUD declines to make the change since HUD does not have the authority to require that an owner accept a voucher.

**Issue: Statutory Notice Requirements (§ 983.206)**

**Comment:** Several commenters expressed their support for this provision. Several commenters expressed support for the requirement in § 983.206(b) and (d) that would require owners to provide tenants one-year notice of the owner’s intent to terminate a PBV housing assistance payment contract. Certain commenters suggested that the notice be in writing and that the notice require “owners, after a contract is terminated, to accept any replacement tenant-based assistance provided to residents who had been assisted with PBV.” Other commenters stated that providing notice to tenants will allow them “to search for and secure affordable replacement housing.” The commenters also noted support for (d) that “ensures that tenants must be able to remain in their units without a rent increase if the owner fails to provide timely notice.”

A commenter recommended replacing the word “notify” with “provide written notice” in § 983.206(b) and revising § 983.206(d)(1). The commenter suggested that when the owner does not give timely written notice than the owner must permit the tenants in assisted units to remain in their units for the required notice period until one year following the legally required

notice, with no increase in the tenant portion of their rent and with no eviction. This same commenter recommended adding a paragraph (e) stating: “Following termination of the contract, an owner shall accept any replacement tenant-based assistance provided to assisted tenants in residence at the time of the termination, provided that this requirement shall not limit the reasonable market rent charged by the owner.”

Another commenter requested that HUD reconsider requiring owners to provide notice one year prior to termination because it is not required by the statute and may have disadvantages to residents. The commenter stated that the statute does not require notice for the PBV program when it is tenant-based assistance. Specifically, the commenter noted that “unlike other project based programs, if the PBV HAP Contract is terminated, each resident would receive a tenant-based voucher to either stay at the project or move to another place of their choice. A year of notice is counter-productive since it causes great concern for the residents, even though their housing assistance is not in jeopardy.” The commenter recommended that HUD require 60 days’ notice and HUD could consider requiring that “if the Owner will continue to operate the project as rental housing, the tenants may not be evicted except under the terms of their lease.”

**HUD Response:** HUD appreciates the comments in support of § 983.206, but disagrees with the commenter’s that stated that the statutory requirement to provide a one-year notice of termination or expiration does not apply to the PBV program. Section 8(c)(8) applies to project based assistance and Section 8(f) of the statute defines project-based assistance to include assistance provided under Section 8(o)(13) (PBV assistance).

**Issue: Recommending a Change to the 3-Year Limit on Adding Units to an Existing HAP Contract (§ 983.207)**

**Comment:** Certain commenters objected to the existing three year limit for a PHA to add units to a HAP contract. The commenters stated that the need to add usually because “families living in those units were not eligible for the vouchers” upon execution of the HAP contract. The commenters recommended HUD provide no limit on adding units.

Another commenter requested that HUD clarify § 983.207(d) so “that the PHA may amend the HAP Contract at any time to add additional units, provided that the total number of units does not exceed the original award/HAP

Contract. To the extent those units were part of the initial award, the fact that the contract was terminated with respect to specific units in accordance with 24 CFR 983.211 should not make those units ineligible for assistance provided that future families are eligible for assistance.” Another commenter recommended amending § 983.207(b) by adding that “or at any time when a unit that has been occupied by an ineligible family since that execution date becomes occupied by an eligible family” after the language “during the three-year period immediately following the execution date of the HAP contract.” A commenter stated that allowing units to be added after the three years from the initial HAP contract where turnover provides “would facilitate contract administration, as well as financing when renovations are involved.”

Another commenter stated that being able to add units is important for the feasibility of the project and the PHA should be able to increase the number of units under the HAP contract to the number originally awarded. This same commenter recommended the following language for § 983.207(b): “*Amendment to add contract units.* At the discretion of the PHA, a HAP contract may be amended to add additional PBV contract units in the same project up to the number of units originally awarded upon the proposal selection. An amendment to the HAP contract is subject to all PBV requirements (e.g. rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.”

**HUD Response:** HUD appreciates the commenters’ recommendation and is providing for the reinstatement of some units to the HAP contract under § 983.211.

**Issue: Amendment To Add Contract Units—Clarifying the 25% Per-Project Cap When Adding Units to an Existing HAP Contract (§ 983.207)**

**Comment:** Commenters requested that HUD amend § 983.207(b) to clarify that the HAP can “assist more than the 25% per-project cap if the assisted units are excepted units in accordance with 983.56.” A commenter recommended that HUD strike the language and simply require additional units to comply with the regulations in 24 CFR part 983.

**HUD Response:** HUD agrees with the commenter and the final rule makes this clarification. The rule clarifies that the 25 percent limitation applies unless the

units are excepted units pursuant to § 983.56.

**Issue: Removal of Units From HAP Contract (§§ 983.211, 983.258)**

**Comment:** A commenter stated that the change proposed to § 983.211 is important, but recommended that HUD “improve on the proposed rule by allowing a PHA, where there is not another unit that can be substituted to maintain the number of PBV units in the property, to allow the unit to remain under the PBV contract despite the absence of housing assistance payments for the unit. The commenter stated that alternatively, HUD should allow the reduction in units under the PBV contract to be temporary, to enable the original number of PBV units to be restored if a unit becomes vacant and is rented to an eligible family. (A change in § 983.258 also would be required to implement this recommended policy.)”

Another commenter stated that volume for PBVs are governed by budget authority rather than number of units, so “allowing units with unsubsidized families to remain under HAP contract would facilitate program administration with no negative effects on the program.” Other commenters stated that HUD’s proposal does not provide a return of PBV units to the HAP Contract. The commenters recommended that if units are removed from the HAP contract without fault of the owner, the units should be added back to the HAP contract with no delay when the units are re-released to eligible families.

**HUD Response:** HUD appreciates the commenters’ recommendation and is adopting language that allows for a project that is not partially assisted to re-instate units when an ineligible family vacates and clarifying when a partially assisted unit may substitute a unit in § 983.211. However, the other changes recommended by the commenters should first undergo public comment before being adopted in a rule for effect. HUD will consider such changes in future rulemaking for the PBV program.

**Issue: Participant Selection—Preference for People With Disabilities (§ 983.251)**

**Comment:** Commenters stated that the interpretation of § 983.251(d) has been challenging for PHAs and HUD, and that the use of the word “qualify” in place of “need” in the rule is an improvement in tenant selection preference policies. A commenter stated that PBV can be used to create supportive housing properties or sub-set of units at a property, and the housing could have outside service providers or on-site services provided. Other commenters

recommended that the language be changed to “(d) *Preference for services offered*. In selecting families, PHAs may give preference to disabled families who qualify for services offered in conjunction with the assisted units, in accordance with the limits under this paragraph. . . .”

**HUD Response:** HUD appreciates the commenters’ feedback and recommendations. As noted earlier in this preamble, the final rule uses the existing codified term “need” and does not substitute “qualify” for “need” based on concern that “qualify” may be interpreted in such a way as to exclude tenants eligible for the preference. Further, HUD does not adopt the commenters’ phrase of “services offered in conjunction with the assisted units” because HUD returns to the existing language “services offered at a particular project.” HUD believes the language distinguishing between “services offered at a particular project and services offered in conjunction with specific units” may be misinterpreted as more limiting than the existing language.

**Issue: Participant Selection—Rescreening (§ 983.251(b))**

**Comment:** Commenters stated that tenants residing at the time of conversion from one form of assistance to PBVs should be exempt from rescreening in fulfillment of “HUD’s duty to minimize displacement in administration of its programs, 42 U.S.C. 5313 note.” Other commenters recommended adding as the second to last sentence of § 983.251(b) the following language, “In addition, such families who were recipients of another form of HUD rental assistance at the time of project selection will not be subject to additional elective screening requirements and may be evicted from the property only for good cause in accordance with the lease.”

**HUD Response:** HUD does not have the statutory authority to eliminate mandatory PHA screening requirements. The issue of permissive screening activities a PHA may engage in is beyond the scope of this rule. Any changes HUD might seek to make in the future would require that such changes be proposed to give interested parties the opportunity to comment.

**Issue: Termination of Leases (§ 983.256)**

**Comment:** Commenters stated that the preamble to the proposed rule states the intent is to provide “a reliable long-term lease for a tenant unless the owner provides *good cause* for termination of the lease or nonrenewal of the lease.” However, § 983.256(f)(3)(i) of the

proposed regulatory text continues to allow an owner to terminate a lease without good cause. Other commenters recommended that HUD revise the language to state “(i) The owner terminates the lease for good cause.” A commenter recommended that that language be changed to protect those who may be targeted because of bias. Another commenter recommended that § 983.256 include explicit language stating that a tenancy may only be terminated for good cause.

**HUD Response:** The PBV regulations at §§ 983.256 and 983.257 must be read in conjunction with the cross-referenced tenant-based regulation (§ 982.310) which only allows termination for good cause. The PBV provision that allowed an owner to renew without good cause, former § 983.257(b)(3), has been removed. Nonetheless, to eliminate the possibility of confusion, the final rule revises § 983.256 to clearly state that an owner may only terminate a lease for good cause during the lease term.

**Issue: Overcrowded, Under-Occupied, and Accessible Units (§ 983.260)**

**Comment:** A commenter stated the rule “states that a PHA must terminate PBV for a family in a wrong-sized unit or in a unit with unneeded accessibility features, while also requiring a PHA to provide continued housing assistance.” Other commenters requested that HUD clarify by providing guidance regarding the type of assistance that should be offered and suggested adding language stating that “an appropriate unit must be offered if one is available in the same building or development. If an appropriate unit is not available, a PHA may offer another form of project-based assistance. However, a PHA must always offer tenant-based voucher assistance in addition to project-based assistance, allowing a family to choose the form of assistance.”

A commenter recommended that for families that resided in a unit for at least a year the PHA should be required to offer tenant-based voucher assistance “and allow the family to choose the form of assistance it will receive. In addition, when a family has received a tenant-based voucher because its PBV assistance is terminated due to unit size or accessibility features, the rule should explicitly require the PHA to help the family find an appropriate unit, consistent with the requirement in 24 CFR § 982.403.” This same commenter stated that the proposed change is confusing and fails to provide protections for family similar to other HUD project-based rental assistance programs. The commenter requested that HUD use the existing language

concerning termination of the “housing assistance payment” to prevent confusion that the “HAP contract” is being terminated and “ensure that units are not made unavailable for other families who would be eligible for project-based assistance when a vacating family receives a tenant-based voucher. In addition, the final rule should clarify that such termination should occur only when an available unit has been identified for a family receiving a tenant-based voucher. This change is consistent with the parallel rule in the regular tenant-based program, and is necessary to avoid causing the displaced family to become homeless.

**HUD Response:** The PBV regulations at §§ 983.260(c)(1) and 983.260(c)(2) are clarified in this final rule to express HUD’s intent that if a family does not move out of the wrong-sized or accessible PBV unit by the expiration of the term of the family’s voucher (including any extension) or within a reasonable time of the PHA’s offer of assistance in accordance with § 983.260(c)(2), the PHA must remove the unit from the HAP contract.

**Issue: Suggested Change to Utility Allowance (§ 983.301(f))**

**Comment:** A commenter recommended that HUD revise the RAD program and other preservation conversions that have a PHA utility allowance, but permit the use of property based utility allowances when available. The commenter stated that the rule directs PHAs “to use their current PHA wide utility allowances for purposes of calculating rents” which works when PBVs “are added to a previously unassisted project where the property utility data is not available. However, for properties that have had HUD assistance, it is very likely that the property will have its own utility allowance which is probably more up to date than the PHA allowance and certainly will be reflective of the property.” Allowing the use of the PHA utility allowance creates a disincentive “for the property owner to undertake energy efficiency retrofits.”

**HUD Response:** This rule is limited to revising and updating regulations for the PBV program. Regulations applicable to RAD, which is a demonstration program, are covered by the RAD notices.

**Issue: Implementation of the Rent Floor Permissible Rather Than Mandatory (§§ 983.301, 983.302, 983.303)**

**Comment:** Commenters stated that the current language in §§ 983.301 and 983.302 goes beyond the statutory

language of HERA. A commenter stated that HERA explicitly delegated the authority to make the decision about rent floors for a PBV contract to the PHA, and doing so makes good policy sense. For example, the commenter stated that “It may be important to have such rent security in locations where it could reasonably be expected that rents are volatile and the PBV contract will enable the owner to leverage additional funds for development or rehabilitation. But in other situations, such as where the PBV contract is for existing housing, such rent security could potentially come at the expense of a PHA’s ability to assist additional families.” Other commenters recommended that these two regulatory sections be revised to allow the PHA in its discretion to not reduce the rents below the initial rents, if the contract rents are not reasonable. PHAs need to retain this discretion to weigh the needs of the particular project against other projects.

A commenter requested that HUD make it clear that PHAs could reduce the rent based on the reasons specific in the rule and clarify “that whether or not the PHA has agreed contractually to not reduce rents below the initial rent, a PHA is not required to reduce PBV rents below the initial rent if the FMR declines by more than 5% or the rent would otherwise exceed 110% of FMR. PHAs should be able to make the decisions of whether to reduce PBV rents when the FMR declines on a case-by-case basis.”

Another commenter suggested that HUD change § 983.301(e) to require that the “rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent.” The commenter stated that the statutory language does not require the stipulation in the PBV HAP contract and “if a PHA chooses to include this stipulation in the PBV HAP contract with the consent of the owner, the language in HERA requires that the provision stipulate the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the PBV assisted unit.”

**HUD Response:** HUD appreciates the comments received on the implementation of the HERA provision allowing initial PBV rents to be considered the rent floor for purposes of rent adjustments, but HUD disagrees with the commenters’ opinion that the statutory provision explicitly delegates the authority to make the decision about

rent floors for a PBV contract to the PHA. Congress explicitly delegated certain decisions to PHAs in HERA (e.g., the statute specifically states that the PHA may, in its discretion continue to provide assistance under the contract . . . for a dwelling unit that becomes vacant . . .). In regard to rent adjustments, the statute states, in relevant part, that the contract *may* provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract. Since the HAP contract is a HUD-prescribed form, HUD proposed a reasonable policy to implement the statutory provision. However, while HUD does not agree that the statute explicitly delegates the authority to PHAs, HUD agrees that PHAs are in the best position to make such determinations based on their individual markets, and other local considerations. Therefore, the final rule provides that the PHA may elect, in the HAP contract, to establish that the initial contract rent shall serve as the rent floor. The PBV HAP contract will also be revised.

**Issue: Removing Families With Below-Market Rents Who Are Not Receiving PBV Assistance From the Rent Reasonableness Calculation (§ 983.303)**

**Comment:** Commenters stated that HUD has recognized when a housing conversion action takes place, an owner will often not raise rents on existing tenants who are not receiving rental subsidies in connection with the conversion. The commenters suggested adding a new § 983.303(c)(4) stating “Units in the premises or project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract are not to be taken into consideration for rent reasonableness determinations.”

**HUD Response:** The commenters are requesting that HUD expand the definition of assisted units for purposes of rent comparability to include units in the project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract. In the very limited cases where a property has undergone a housing conversion action, HUD allows units occupied by tenants on the date of the eligibility event who do not receive vouchers to be considered assisted units if the owner chooses to continue charging below market rents to those families by offering lower rents, rent

concessions, or other assistance to those families. These non-voucher families in a housing conversion action are often long-time tenants, many of whom are elderly and who had been paying below market rents prior to the housing conversion action. Considering such units assisted for purposes of rent reasonableness is an exception to the long-standing policy that an assisted unit is a unit that is assisted under a Federal, State, or local government program. However, for rent reasonableness determinations in the Housing Choice Voucher program, including the project-based voucher program, in the case of a family moving into a multifamily property, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying. PHAs should refer to PIH Notice 2011–46 for guidance on rent reasonableness determinations.

#### IV. Findings and Certifications

##### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and the rule is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule largely makes conforming amendments to HUD regulations that govern the public and assisted housing programs, for which changes were recently made by the Housing and Economic Recovery Act of 2008. As advised in the November 24, 2008, notice that preceded this rule, the statutory changes made to these programs were largely self-executing, and required only

conforming regulatory amendments. This rule makes those conforming amendments. The statutory changes to the programs, as reflected in the conforming amendments, impose no significant economic impact on a substantial number of small entities. This rule makes other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

#### *Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That FONSI remains applicable to this final rule and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

#### *Paperwork Reduction Act*

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2577–0169. In accordance with the Paperwork Reduction Act, an agency 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.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

#### **List of Subjects**

##### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 982*

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 983*

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 982, and 983, as follows.

#### **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. In § 5.609, paragraph (c)(14) is revised to read as follows:

##### **§ 5.609 Annual income.**

\* \* \* \* \*

(c) \* \* \*

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

\* \* \* \* \*

#### **PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM**

■ 3. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

■ 4. In § 982.507, paragraph (a)(1) and the introductory text to paragraph (b) are revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

##### **§ 982.507 Rent to owner: Reasonable rent.**

(a) *PHA determination.* (1) Except as provided in paragraph (c) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

\* \* \* \* \*

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

\* \* \* \* \*

(c) *Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.* (1) *General.* For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in 24 CFR part 92), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) *LIHTC.* If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:

(i) Reasonable rent as determined pursuant to a rent comparability study; and

(ii) The payment standard established by the PHA for the unit size involved.

(3) *HOME Program.* [Reserved]

\* \* \* \* \*

#### **PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

■ 5. The authority citation for part 983 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).



■ 6. In § 983.2, paragraphs (b)(3), (c)(2)(i), and (c)(7) are revised to read as follows:

**§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.**

(b) \* \* \*

(3) Provisions on the following special housing types: Shared housing, manufactured home space rental, and the homeownership option.

(c) \* \* \*

(2) \* \* \*

(i) Section 982.310 (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

■ 7. In § 983.3(b):

■ a. Definitions for “housing credit agency”, “partially assisted project”, “project”, “project-based certificate (PBC) program”, and “release of funds” are added in alphabetical order;

■ b. The following definitions are revised: “Excepted units” “premises,” “qualifying families,” “special housing type,” and “wrong-size unit”; and

■ c. The definitions for “partially assisted building” and “state certified appraiser” are removed.

**§ 983.3 PBV definitions.**

(b) \* \* \*

*Excepted units* (units in a multifamily project not counted against the 25 percent per-project cap). See § 983.56(b)(2)(i).

*Housing credit agency.* For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD’s HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of “housing credit agency” as defined by section 42 of the Internal Revenue Code of 1986.

*Partially assisted project.* A project in which there are fewer contract units than residential units.

*Premises.* The project in which the contract unit is located, including common areas and grounds.

*Project.* A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *Contiguous* in this definition includes “adjacent to”, as well as touching along a boundary or a point.

*Project-based certificate (PBC) program.* The program in which project-based assistance is attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001 (see § 983.10).

*Qualifying families* (for purpose of exception to 25 percent per-project cap). See § 983.56(b)(2)(ii).

*Release of funds* (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and § 983.58, means that HUD approves the local PHA’s Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the PHA to execute an “agreement to enter into housing assistance payment contract” (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

*Special housing type.* Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

*Wrong-size unit.* A unit occupied by a family that does not conform to the PHA’s subsidy guideline for family size, by being either too large or too small compared to the guideline.

■ 8. In § 983.4, the “Labor standards” paragraph is revised to read as follows:

**§ 983.4 Cross-reference to other Federal requirements.**

*Labor standards.* Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

■ 9. In § 983.5, paragraph (c) is revised to read as follows:

**§ 983.5 Description of the PBV program.**

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers, in accordance with § 983.6(d).

■ 10. In § 983.6, paragraph (d) is added to read as follows:

**§ 983.6 Maximum amount of PBV assistance.**

(d) Before a PHA issues a Request for Proposals in accordance with § 983.51(b)(1) or makes a selection in accordance with § 983.51(b)(2), the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

■ 11. In § 983.9, paragraph (a)(2) is revised and a new paragraph (c) is added to read as follows:

**§ 983.9 Special housing types.**

(a) \* \* \*

(2) In the PBV program, the PHA may not provide assistance for shared housing, manufactured home space rental, or the homeownership option.

(c) *Cooperative housing.* (1) *Applicability of part 983.* Except as provided in paragraph (c)(3) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: §§ 983.256(b) and (c), 983.258 and 983.259 do not apply.

(2) *Applicability of part 982.* (i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) *Assistance in cooperative housing.* Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of 24 CFR 983 apply.



(4) *Rent to owner.* The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with § 983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) *Other fees and charges.* Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

■ 12. In § 983.10, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

**§ 983.10 Project-based certificate (PBC) program.**

\* \* \* \* \*

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983, codified as of May 1, 2001, with the following exceptions:

(1) *PBC renewals.* (i) *General.* Consistent with the PBC HAP contract, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

(ii) *Renewal of PBC as PBV.* At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605, 982.609 and 982.614).

(ii) *Lead-based paint requirements.*

(A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBC program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 applies to the PBC program.

■ 13. In § 983.51:

■ a. Paragraph (a) is amended by removing the term “building” and adding in its place “project” in the last sentence;

■ b. Paragraph (b)(2) is revised; and

■ c. Paragraph (g) is added to read as follows:

**§ 983.51 Owner proposal selection procedures.**

\* \* \* \* \*

(b) \* \* \*

(2) *Selection based on previous competition.* The PHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program’s competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

\* \* \* \* \*

(g) Owner proposal selection does not require submission of form HUD–2530 or other HUD previous participation clearance.

■ 14. In § 983.52, paragraph (a) is revised to read as follows.

**§ 983.52 Housing type.**

\* \* \* \* \*

(a) *Existing housing*—A housing unit is considered an existing unit for

purposes of the PBV program, if at the time of notice of PHA selection the units substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner’s proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

\* \* \* \* \*

■ 15. In § 983.53 is revised by:

■ a. Adding the word “and” after the semicolon in paragraph (a)(5);

■ b. Removing paragraph (a)(6);

■ c. Redesignating paragraph (a)(7) as paragraph (a)(6);

■ d. Removing paragraph (b);

■ e. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively;

■ f. Revising newly redesignated paragraph (b); and

■ g. Adding a new paragraph (d).

**§ 983.53 Prohibition of assistance for ineligible units.**

\* \* \* \* \*

(b) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

\* \* \* \* \*

(d) *Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP.* The PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in § 983.152 after proposal submission and prior to execution of an AHAP.

■ 16. In § 983.55, paragraphs (a) and (b) are revised to read as follows:

**§ 983.55 Prohibition of excess public assistance.**

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax

concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

(b) *When subsidy layering review is conducted.* The PHA may not enter into an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

\* \* \* \* \*

■ 17. In § 983.56:

- a. The section heading is revised;
- b. The word "building" is removed and "project" is added in its place everywhere it appears in paragraph (a), including the heading of paragraph (a), and in paragraph (b)(1) introductory text, (b)(1)(ii), (b)(2)(i), and (b)(3)(i);
- c. Paragraph (b)(2)(ii)(A) is revised;
- d. The reference "§ 983.261(d)" in paragraph (b)(2)(ii)(B) is removed and "§ 983.262(d)" is added in its place;
- e. Paragraph (b)(3) is redesignated as paragraph (b)(4), and a new paragraph (b)(3) is added; and
- f. Paragraph (c) is revised to read as follows.

**§ 983.56 Cap on number of PBV units in each project.**

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*

(A) Elderly and/or disabled families; and/or

\* \* \* \* \*

(3) *Combining exception categories.* Exception categories in a multifamily housing project may be combined.

\* \* \* \* \*

(c) *Additional, local requirements promoting partially assisted projects.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

- (1) Establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building,
- (2) Determine not to provide PBV assistance for excepted units, or
- (3) Establish a per-project cap of less than 25 percent.

■ 18. In § 983.58, paragraph (d)(1)(i) is revised to read as follows:

**§ 983.58 Environmental review.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds, as defined in § 983.3(b);

\* \* \* \* \*

■ 19. In § 983.59:

- a. Paragraph (b)(1) is revised;
- b. Paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added; and
- c. Paragraph (d) is revised to read as follows:

**§ 983.59 PHA-owned units.**

\* \* \* \* \*

- (b) \* \* \*

(1) *Determination of rent to owner for the PHA-owned units.* Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on PBV program requirements;

(2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

\* \* \* \* \*

(d) *Payment to independent entity.* (1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

■ 20. In § 983.101, paragraph (b) is revised to read as follows:

**§ 983.101 Housing quality standards.**

\* \* \* \* \*

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV

program pursuant to § 983.2 are also inapplicable to special housing types under the PBV program.

\* \* \* \* \*

■ 21. In § 983.152:

- a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (a) and (d), respectively;
- b. Newly redesignated paragraph (b) is revised; and
- c. A new paragraph (c) is added to read as follows:

**§ 983.152 Purpose and content of the Agreement to enter into HAP contract.**

\* \* \* \* \*

(b) *Requirement.* The PHA must enter into an Agreement with the owner at such time as provided in § 983.153. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(c) *Commencement of construction or rehabilitation.* The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

\* \* \* \* \*

■ 22. In § 983.153, add introductory text and revise paragraph (c) to read as follows:

**§ 983.153 When Agreement is executed.**

The agreement must be promptly executed, in accordance with the following conditions:

\* \* \* \* \*

(c) *Prohibition on construction or rehabilitation.* The PHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission

■ 23. In § 983.202, paragraph (a) is revised to read as follows:

**§ 983.202 Purpose of HAP contract.**

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

\* \* \* \* \*

■ 24. In § 983.203, paragraph (h) is revised to read as follows:

**§ 983.203 HAP contract information.**

\* \* \* \* \*

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

\* \* \* \* \*

■ 25. In § 983.205, paragraphs (a) and (b) are revised to read as follows:

**§ 983.205 Term of HAP contract.**

(a) *15-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with § 983.59.

(b) *Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.

\* \* \* \* \*

■ 26A. Sections 983.206, 983.207, 983.208, and 983.209 are redesignated, respectively, as §§ 983.207, 983.208, 983.209, and 983.210.

■ 26B. A new § 983.206 is added to read as follows.

**§ 983.206 Statutory notice requirements: Contract termination or expiration.**

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner’s refusal to renew the HAP contract.

(d)(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner’s inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

■ 27. In redesignated § 983.207, paragraph (b) is revised to read as follows:

**§ 983.207 HAP contract amendments (to add or substitute contract units).**

\* \* \* \* \*

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with § 983.56(b)), or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

\* \* \* \* \*

■ 28. In redesignated § 983.210, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

**§ 983.210 Owner certification.**

\* \* \* \* \*

(i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family’s membership in a cooperative.

(j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

■ 29. A new § 983.211 is added to subpart E to read as follows:

**§ 983.211 Removal of unit from HAP contract.**

(a) Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

(b) If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with paragraph (b) of this section, must be permissible under § 983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA’s selection policies.

■ 30. In § 983.251, a new paragraph (a)(4) is added to read as follows:

**§ 983.251 How participants are selected.**

(a) \* \* \*

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

\* \* \* \* \*

■ 31. In § 983.256, paragraphs (f) and (g) are revised to read as follows:

**§ 983.256 Lease.**

\* \* \* \* \*

(f) *Term of lease.* (1) The initial lease term must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease for good cause;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

(g) *Lease provisions governing absence from the unit.* The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

**§ 983.257 [Amended]**

■ 32. In § 983.257, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and amended by removing the word “per-building” and adding in its place “per-project”.

■ 33A. Sections 983.258, 983.259, 983.260, and 983.261 are redesignated as §§ 983.259, 983.260, 983.261, and 983.262, respectively.

■ 33B. A new § 983.258 is added to read as follows:

**§ 983.258 Continuation of housing assistance payments.**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to § 983.211.

■ 34. In redesignated § 983.260, the word “building” is removed and “project” is added in its place everywhere it appears in paragraph (b)(2)(i), and paragraph (c) is revised to read as follows:

**§ 983.260 Overcrowded, under-occupied, and accessible units.**

\* \* \* \* \*

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA, and remove the unit from the HAP contract.

■ 35. In redesignated § 983.262, the section heading and paragraphs (b) and (d) are revised and a new paragraph (e) is added to read as follows.

**§ 983.262 When occupancy may exceed 25 percent cap on the number of PBV units in each project.**

\* \* \* \* \*

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

\* \* \* \* \*

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or

disabled family status where the PHA does not exercise its discretion under paragraph (e) of this section) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with § 983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family.

■ 36. In § 983.301, paragraphs (d) and (e) are revised to read as follows:

**§ 983.301 Determining the rent to owner.**

\* \* \* \* \*

(d) *Rent to owner for other tax credit units.* Except in the case of a tax-credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units may be determined by the PHA pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine the reasonable rent in accordance with § 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to

owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

\* \* \* \* \*

■ 37. In § 983.302:

■ a. Paragraph (c) is revised to read as set forth below; and

■ b. The reference in paragraph (e)(3) to “§ 983.206(c)” is removed and “§ 983.207(c)” is added in its place.

**§ 983.302 Redetermination of rent to owner.**

\* \* \* \* \*

(c) *Rent decrease.* (1) If there is a decrease in the rent to owner, as established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(2) If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP

contract and a rent decrease is required pursuant to § 983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

\* \* \* \* \*

■ 38. In § 983.303, paragraphs (a), (b)(3), and (f)(1) are revised to read as follows:

**§ 983.303 Reasonable rent.**

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except that where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

(b) \* \* \*

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and

\* \* \* \* \*

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned

units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.59, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

\* \* \* \* \*

■ 39. In § 983.304, paragraph (e) is revised to read as follows:

**§ 983.304 Other subsidy: effect on rent to owner.**

\* \* \* \* \*

(e) *Other subsidy: rent reduction.* To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

\* \* \* \* \*

Dated: June 16, 2014.

**Sandra B. Henriquez,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 2014–14632 Filed 6–24–14; 8:45 am]

**BILLING CODE 4210–67–P**

**ADMINISTRATIVE GUIDELINES: SUBSIDY LAYERING  
REVIEWS FOR SECTION 8 PROJECT-BASED  
VOUCHER HOUSING ASSISTANCE PAYMENTS  
CONTRACTS AND MIXED-FINANCED DEVELOPMENT**

gathering and maintaining the data needed, and completing and reviewing the collection of information.

As HUD is furnishing a significant amount of data directly to the program participants, the burden in completing the Assessment Tool is reduced. Where HUD is not providing data, as noted earlier in this preamble, program participants are required to consider and in some cases utilize available local data and local knowledge. This refers to data already publicly available and reasonably easy to access. This does not refer to obscure data that may not be known or easily found, that requires an independent data or information collection effort such as a local survey, or that requires extensive analytical expertise or staff effort for instance in

manipulating data sets or developing a complex methodology for analyzing complex data that may be available. With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.

In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH,

whether in the Analysis section of the Assessment or in Section III of the AFH with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.

The Assessment Tool is available at [http://www.huduser.org/portal/affht\\_pt.html](http://www.huduser.org/portal/affht_pt.html).

Information on the estimated public reporting burden is provided in the following table:

#### REPORTING AND RECORDKEEPING BURDEN

CFR Section reference	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 5.154(d) (Assessment of Fair Housing) .....	* 4,388	1	With each Con Plan or PHA Plan.	200	877,600
Total Burden .....	.....	.....	.....	.....	877,600

\*The number of respondents is based on the number of entities that will complete the version of the Assessment Tool that is the subject of this notice and is designed for use by entitlement jurisdictions other than States and joint submissions by entitlement jurisdictions and public housing agencies (PHAs) that are submitting a joint AFH. Entitlement jurisdictions that would use this template number 1,181. HUD is estimating that half of the PHAs, which number in total 4053, would opt for a joint submission but this estimate, 2026, may be high.

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by *November 25, 2014* to [www.regulations.gov](http://www.regulations.gov) as provided under the **ADDRESSES** section of this notice.

Comments must refer to the proposal by name and docket number (FR-5173-N-02).

Following consideration of public comments submitted in response to this notice, HUD will submit for further public comment, for a period of 30 days, a version of the Assessment Tool that reflects consideration of the public comments received in response to this notice.

Dated: September 22, 2014.

**Camille E. Acevedo,**

*Associate General Counsel for Legislation and Regulations.*

[FR Doc. 2014-22956 Filed 9-25-14; 8:45 am]

**BILLING CODE 4210-67-P**

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5417-N-02]

#### **Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This document provides Administrative Guidelines (Guidelines) which qualified Housing Credit Agencies (HCAs) must follow in implementing subsidy layering reviews in accordance with the requirements of the Housing and Economic Recovery Act of 2008 (HERA), in those cases where the HCA elects to conduct the review. In certain instances, described in this notice, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The requirements in this notice do not supersede the subsidy layering requirements of other Federal programs.

This notice sets forth the guidelines for conducting subsidy layering reviews for mixed-finance public housing projects and for newly constructed and rehabilitated structures combining other forms of government assistance with project-based voucher assistance under section 8 of the United States Housing Act of 1937 (1937 Act).

**FOR FURTHER INFORMATION CONTACT:** Luci Ann Blackburn, Urban Revitalization Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4134, Washington, DC 20410; telephone number 202-402-4190 (this is not a toll free number); or Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202-402-

4212 (this is not a toll free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Summary Chart*

The remainder of this notice describes the current requirements regarding subsidy layering reviews for different development scenarios. The current legal requirements and HUD's policy, which are more fully described in this notice, are summarized for ease of reference in the following chart:

Type of project	SLR reviewer	Certification required under section 102(d) of the HUD Reform Act
PBV (without LIHTC), New Project .....	HUD .....	Yes.
PBV only (without LIHTC), Existing Project .....	SL Review not required .....	No.
PBV with LIHTC .....	HCA <sup>1</sup> or HUD .....	If the HCA were to do the review, and the HCA's SL Review took into account proposed PBV assistance, certification would not be required. <sup>2</sup> Otherwise, HUD must certify.
PBV with LIHTC and Mixed Finance .....	HCA <sup>3</sup> or HUD .....	Yes.
Mixed Finance without LIHTC .....	HUD .....	Yes.
Mixed Finance with LIHTC .....	HCA <sup>4</sup> or HUD .....	Yes, by entity performing review.
Mixed Finance with LIHTC/No HCA or HCA declines to do review.	HUD .....	Yes.

*B. The Housing and Economic Recovery Act of 2008 (HERA)*

HERA (Pub. L. 110-289, approved July 30, 2008) made numerous revisions to the Section 8 Project-Based Voucher program. On November 24, 2008, at 73 FR 71037, HUD published a **Federal Register** notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That notice provided an overview of key provisions of HERA that affect HUD's public housing programs, and identified those provisions that are self-implementing, requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. That notice also stated that HUD would be issuing implementing guidance on section 8(o)(13)(M)(i) of the 1937 Act (42 U.S.C. 1437f(o)(13)(M)(i)), as applicable to newly constructed or rehabilitated housing. (See 73 FR 71039.)

On July 9, 2010, at 75 FR 39561, HUD published a **Federal Register** notice stating the guidelines HCA's must use in conducting subsidy layering reviews for newly constructed and/or rehabilitated

structures combining other forms of government assistance with project-based voucher assistance. These notices state that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or local agencies performing subsidy layering reviews for project-based voucher housing assistance payment (HAP) contracts for new construction and rehabilitated projects is not self-implementing. This notice restates and updates these prior notices, including specific guidelines related to subsidy layering and low-income housing tax credit (LIHTC).

*C. Rental Housing Policy Alignment*

Through the work of the Rental Housing Policy Alignment team, an outgrowth of the Interagency Rental Policy Working Group formed in 2011, various workstreams are currently underway to streamline government oversight and align standards across federal agencies providing funding for affordable rental housing.<sup>5</sup> One of these workstreams is the Subsidy Layering Review group, which seeks to provide a template for agencies within a State to share duties and information related to approval and review of federally-funded affordable housing. A pilot program aiding the signing of Memoranda of Understanding between various State and federal agencies providing affordable housing assistance was

conducted successfully across seven states in 2012,<sup>6</sup> and HUD intends to publish a guidebook that will allow all agencies that wish to enter into such an agreement to do so. This notice provides guidance and updates on how and in what situations such agreements can be utilized to reduce the burden of subsidy layering review on government agencies.

*D. Section 102 of the HUD Reform Act and Other Authorities*

HUD's regulations in 24 CFR part 4 implement section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)) and contain a number of provisions designed to ensure greater accountability and integrity in the way in which HUD makes assistance available under certain of its programs. Section 4.13 of 24 CFR (Limitation of assistance subject to section 102(d)) requires HUD to certify, in accordance with section 102(d) of the HUD Reform Act, that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. In addition, The Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), as amended by the Multifamily Housing

<sup>1</sup> It should be noted that, at the time of publication of this Notice, HUD is doing the subsidy layering reviews in all types of cases, including in mixed-finance projects with LIHTC.

<sup>2</sup> Even though not required by HERA, HUD in practice requires certifications in these cases.

<sup>3</sup> See footnote 1.

<sup>4</sup> See footnote 2.

<sup>5</sup> See <http://www.whitehouse.gov/blog/2011/02/01/urban-update-aligning-federal-rental-housing-policy>.

<sup>6</sup> See [http://www.huduser.org/portal/pdredge/pdr\\_edge\\_featd\\_article\\_012612.html](http://www.huduser.org/portal/pdredge/pdr_edge_featd_article_012612.html).



Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a “Subsidy Layering Review” provision at 42 U.S.C. 3545 note, which states that the subsidy layering requirement for projects receiving assistance under a HUD program and receiving tax credits may be satisfied “by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing.” This statutory note also sets requirements for equity capital and project costs. Finally, as noted, in 2008, HERA altered some of these subsidy layering requirements.

- **Project Based Assistance But No LIHTC**

Section 2835 of HERA adds subparagraph (M) to section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. 1437(o)(13), which provides that a subsidy layering review shall not be required for project-based assistance (1) for an existing structure, or (2) if a subsidy layering review has been conducted by the applicable State or local agency. However, this section does not speak to the case where HUD conducts the review, hence that situation is governed by other applicable law, specifically, section 102(d) of the HUD Reform Act, 42 U.S.C. 3545(d), which requires that the Secretary certify that assistance within the jurisdiction of the Department (except that Title II mortgage insurance for this purpose is not considered such assistance) to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1) of this section. Assistance under (b)(1) includes “any related assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.”

- **HUD Assistance Plus LIHTC**

As noted, 42 U.S.C. 3545 note provides that an HCA certification submitted in accordance with HUD guidelines will suffice in lieu of a HUD review when HUD assistance and LIHTC are used in a project. Where there is no current delegation of subsidy layering review authority to an HCA, on

a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD’s review under 42 U.S.C. 3545 note and these guidelines. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA’s subsidy layering review as needed. *Id.*

- **Mixed-Finance and Public Housing Without LIHTC**

It is also possible for mixed-finance arrangements to occur with other forms of federal assistance, but without LIHTC. In regard to such mixed-finance and public housing, the applicable law is again section 102(d) of the HUD Reform Act, and HUD is responsible for performing subsidy layering reviews.

## **II. Certification**

### ***A. HUD’s Certification Requirements Pursuant to 102(d) of the HUD Reform Act***

HUD’s regulation at 24 CFR 4.13 states that before HUD makes any assistance subject to section 102(d), with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies that there are no duplicative government subsidies when combining HUD housing assistance and forms of other federal, State, or local government assistance. Where an HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance, section 2835(a)(1)(F) of HERA eliminates the need for the HUD Reform Act’s section 102(d) certification requirement. However, HUD’s obligation to certify in accordance with 102(d) of the HUD Reform Act and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this notice.

#### **1. HCA Participation Where LIHTC Administered by the HCA Is Involved**

An HCA is ordinarily designated for the purpose of allocating and administering the LIHTC program under section 42 of the Internal Revenue Code (IRC), and so may do the subsidy layering review pursuant to authorization under this notice where

there is LIHTC. In those transactions where there are other forms of government assistance involved, as in proposed project-based voucher projects, which do not include LIHTC, and the HCA has no involvement in respect to the assistance, HUD will generally conduct subsidy layering reviews and make the required HUD Reform Act’s section 102(d) certification in accordance with 24 CFR 4.13 for such projects as it is currently doing. HUD will also continue to conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

#### **2. HCA Participation Where Other Assistance Administered by the HCA May Be Involved**

Currently, transactions involving LIHTC are the only case where the HCA has substantial involvement and, absent a waiver requested by the locality and granted by HUD for good cause, are generally the only case where the HCA performs the subsidy layering review. However, in the future, Congress may appropriate forms of assistance where there is involvement by a local HCA. In those cases, HUD may, by notice published in the **Federal Register**, on such terms and conditions as HUD may provide, and where not contrary to statutory authority, delegate performance of the subsidy layering review to the local HCA.

#### ***B. HCA Certification Under HERA***

Under section 8 of the 1937 Act, specifically at 42 U.S.C. 1437f(o)(13)(M), the HUD Reform Act section 102(d) certification is not required with respect to project-based assistance, or if a subsidy layering review has been conducted by the applicable HCA. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed by the applicable HCA, the HCA must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B of this notice).

## **III. Intent To Participate**

An HCA must notify HUD of its intent to participate in the preparation of subsidy layering reviews for projects combining other forms of government assistance with project-based voucher assistance before performing subsidy layering reviews pursuant to this notice.

Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

#### A. Letter to HUD

An interested HCA shall notify HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by sending a brief letter (Appendix A of this notice), executed by an authorized official of the HCA informing HUD that it: (1) Has reviewed these Guidelines; (2) understands its responsibilities under these Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via email to the Section 8 Financial Management Division at HUD Headquarters at the following address: [pih.financial.management.division@hud.gov](mailto:pih.financial.management.division@hud.gov).

#### B. HUD Acknowledgement

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate is acknowledged by HUD through a response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, on behalf of proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

#### C. Revocation of Participation

If HUD determines that an HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may discontinue the HCA's permission to perform subsidy layering reviews on behalf of proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such a determination.

#### D. HUD Participation

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HUD

Reform Act section 102(d) certification pursuant to such review for projects in cases where: (1) The HCA's authority has been revoked by HUD; (2) an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; (3) project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review; or (4) the project is mixed finance.

#### E. Applicability

These guidelines apply to any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage that is provided under a program administered by HUD for use in, or in connection with, a specific housing project. Assistance provided under section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is assistance to which section 102(d) of the HUD Reform Act applies for subsidy layering review purposes.

#### IV. Definitions

*Category 1 subsidy layering review*—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, with consideration of project-based voucher assistance.

*Category 2 subsidy layering review*—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, but without consideration of project-based voucher assistance.

*Housing Credit Agency (HCA)*—For purposes of performing subsidy layering reviews for proposed project-based voucher projects, a housing credit agency includes a State housing finance agency, a participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986. Any agency for which HUD has previously acknowledged its participation and posted the agency's name on the Office of Public and Indian Housing's Web site as a participating agency prior to the effective date of this notice is also considered to be an HCA for purposes of performing subsidy layering reviews, except where HUD has revoked the HCA's authority to perform subsidy layering reviews.

*Mixed-finance development*—Mixed-finance development refers to the

development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing pursuant to 24 CFR 905.604, where the public housing units are owned in whole or in part by an entity other than a PHA. There are various potential scenarios for the ownership structure of a mixed-finance project, such as: Public housing units may be owned entirely by a private entity; a PHA may co-own with a private entity; or a PHA affiliate or instrumentality may own or co-own the units.

*Other government assistance* is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

*Substantial compliance*—For purposes of making the HERA certification, an HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the HCA's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

#### V. Public Housing Agencies (PHA) Responsibilities

##### A. When Subsidy Layering Reviews Are Required

When a new construction or rehabilitation project has been selected by a PHA pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance, the PHAs must request a subsidy layering review. As part of the selection process, the PHA must require information regarding all HUD and/or other federal, State, or local governmental assistance to be disclosed by the project owner. Form HUD-2880<sup>7</sup> (Appendix C of this notice) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA must also inform the owner that if any information changes on the disclosure,

<sup>7</sup> See <http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf>.

either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

#### *B. Requesting Performance of Subsidy Layering Reviews*

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact its local HUD field office. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to its local HUD field office. The local field office will request HUD Headquarters to conduct the subsidy layering review.

#### *C. Providing Documents Required for Review*

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D of this notice. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for quick reference by either HUD or the PHA.

#### *D. Subsidy Layering Review Timing and Outcome*

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (e.g., environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of project-based voucher assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA's recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

#### **VI. Subsidy Layering Review Categories—Overview**

##### *A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review and Considers Project-Based Voucher Assistance*

Section 8(o)(13)(M)(i) of the 1937 Act (42 U.S.C. 1437f(o)(13)(M)(i)), as added by section 2835(a)(1)(F) of HERA, provides that a subsidy layering review in accordance with section 102(d) of the HUD Reform Act is not required if a subsidy layering review has been conducted by a qualified HCA (of course, HUD retains the option to conduct the review itself). Section 42(m)(2) of the IRC (26 U.S.C. 42(m)(2)) mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its section 42(m)(2) review, the HCA considers all federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HUD Reform Act section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), codified at 42 U.S.C. 1437f(o)(13)(M)(i), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over-compensation. HCAs must therefore analyze the operating pro-forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage

ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application for, or award of, LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review if such review substantially complies with the subsidy layering review requirements under this notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this notice, the HCA may make the required certification (Appendix B of this notice) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA cannot make the required certification because the operation pro-forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VIII.B of this notice and, if necessary, reduce the subsidy source within its control (i.e., the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the project's viability without overcompensation. HUD will notify the PHA before any action to reduce the project-based voucher units due to issues of overcompensation.

***B. Category 2—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review Without Consideration of Project-Based Voucher Assistance***

Where a subsidy layering review has been conducted by an HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (e.g., project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the

operational aspects of the project in accordance with Section VIII.B of this notice.

Although project-based voucher projects are exempted from a full subsidy layering review, the HCA must still be able to certify when combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there are any duplicative forms of assistance (i.e., rental assistance from some other state, federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

***C. Category 3—Mixed-Finance Public Housing Projects***

Under HUD's mixed-finance regulations, subsidy layering review must be conducted by HUD or its designee (e.g., the HCA) pursuant to section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)). HUD is responsible for subsidy layering reviews for mixed-finance and public housing development projects. On a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD's review. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA's subsidy layering review as needed.

**VII. Subsidy Layering Review Guidelines—Procedural Description**

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review it will follow these Guidelines and use the Subsidy Layering Analysis form (Appendix E of this notice).

***A. Maximum Allowable Amounts***

Maximum Allowable Amounts are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of project-based voucher assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD, and, where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

***B. Safe Harbor Standards***

Safe harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional justification and documentation are required.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within Category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; and whether over-head, builder's profit and developer's fee are also within a reasonable range, taking

into account project size, characteristics, locations and risk factors.

## VIII. Subsidy Layering Reviews—Guidelines and Requirements

### A. Category 1 Subsidy Layering Reviews

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (i.e., maintenance, operational, and replacement reserves) proposed for the project, taking into account project size, project characteristics, project location and project risk factors, as determined by the HCA, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

#### 1. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances, such as market conditions or other circumstances that HUD may determine.

##### a. Standard (1)

General Condition: safe harbor—six percent (6%) of construction contract amount.

##### b. Standard (2)

Overhead: safe harbor—two percent (2%) of construction contract amount.

##### c. Standard (3)

Builder's Profit: safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead, and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than fourteen percent (14%) of the hard construction cost.

##### d. Standard (4)

Developer's fee: safe harbor—twelve percent (12%) of the total development cost (profit and overhead).

The maximum allowable developer's fee is fifteen percent (15%) of the project costs (profit and overhead).

#### 2. When Development Costs Exceed the Safe Harbor Standard

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

##### a. HCA Performing Review

In cases where an HCA is performing the review, the HCA must reduce the subsidy source within its control, i.e., the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

##### b. HUD Performing Review

Where HUD is performing the review and it is determined that, after evaluating allowable sources and uses, the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of project-based voucher assistance.

#### 3. When Development Costs Are Within Safe Harbor

If all safe harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operation's pro-forma before making its LIHTC allocation. If the safe harbor and operational standards (discussed below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

#### 4. Operations Standards

##### a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro-forma and apply the standards discussed below and contained within the Operations section of Appendix E of this notice. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected DCR over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (i.e., non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending assumptions for their market area.

Generally, operating expenses should be trended at 1 percent to 3 percent per year and rent increases should be trended at 1 percent to 3 percent per year for the first 5 years and 3 percent for each year thereafter. The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VIII.A.4.b of this notice. HUD may adjust these amounts by notice as new data becomes available.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses and amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach. If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for Category 1 projects) or recommend to HUD the appropriate project-based voucher subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

##### b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total

expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10 percent of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. HUD may adjust this 10 percent standard by notice if new data becomes available.

If the cash-flow is greater than 10 percent of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10 percent of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

#### *B. Category 2 Subsidy Layering Reviews*

Category 2 projects shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year operations pro-forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B of this notice). The Operations Standards outlined in section VIII.A.4. of this notice shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate project-based voucher subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

#### *C. Category 3 Subsidy Layering Reviews*

Section 35 of the 1937 Act (42 U.S.C. 1437z-7) allows HUD to provide Capital or Operating Funds, or both, to a mixed-finance public housing project. According to the statute, the units assisted with Capital or Operating

Funds shall be developed, operated, and maintained in accordance with the requirements of the 1937 Act. The statute permits such projects to have other sources of funding, including private funding and LIHTC funding under the Internal Revenue Code (26 U.S.C. 42).

Regulations related to mixed-finance development are found at 24 CFR 905.604. Pursuant to 24 CFR 905.606 PHAs must submit a development proposal as well as other specific materials and documentation for HUD approval as a precondition to HUD's release of public housing funds for a project's construction. Under 24 CFR 905.610(b), after the PHA submits the evidentiary materials and other documentation required by HUD shall carry out a subsidy layering analysis pursuant to section 102(d) of the HUD Reform Act "to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account other governmental assistance." The subsidy layering review is currently conducted as a part of HUD's review of a development proposal and evidentiary materials and is not designated by HUD to HCAs.

#### *Contents of Subsidy Layering Analysis for Mixed-Finance Projects*

The HUD subsidy layering analysis for mixed-finance projects will include the following review:

a. *Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development; Risk Factors.* HUD will review all mixed-finance projects for compliance with HUD's Cost Control and Safe Harbor Standards (revised April 9, 2003), found at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_9880.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9880.pdf). These standards also contain risk factors for developers with fees above the safe harbor standards.

If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided, as described in the Cost Control and Safe Harbor Standards.

b. *Total Development Cost.* HUD will review the total development cost of each mixed-finance development to

ensure that public housing funds are not spent in excess of the Total Development Cost (TDC) and Housing Construction Cost (HCC) limits pursuant to § 941.306. PIH Notice 2011-38 or successor notice contains the current TDC and HCC limits for specific jurisdictions, and can be found at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/publications/notices/2011](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2011).

An automated TDC worksheet can be found at the following Web site on mixed-finance development: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/hope6/mfph](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/mfph).

c. *Pro Rata Test.* To ensure that the amount of public housing funds committed to a project is proportionate to the number of public housing units contained in the project, HUD will conduct a "Pro Rata Test". To meet this test, the proportion of public housing funds compared to total project funds committed to a project must not exceed the proportion of public housing units compared to the total number of units contained in the project. For example, if there are a total of 120 units in the project and 50 are public housing units, the public housing units are 42 percent of the total number of units in the project. Therefore the amount of public housing funds committed to the project cannot exceed 42 percent of the total project budget, unless otherwise approved by HUD. However, if public housing funds are to be used to pay for more than the pro rata cost of common area improvements, HUD will evaluate the proposal to ensure that common area improvements will benefit the residents of the development in a mixed-income project.

d. *Net Low-Income Tax Credit Equity.* Projects using LIHTC as part of their financing are reviewed to ensure that the sale of these credits results in an amount of net tax credit equity being invested in the project that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that is not less than 51 cents for each dollar of tax credit allocation awarded to a project. HUD also reviews this net amount to ensure that it represents a market rate of equity, given the current market for the purchase of tax credits. To calculate the discounted net proceeds, HUD reviews the gross syndication proceeds and other expenses relevant to completing the tax credit syndication, compounding the equity installments received prior to the project's Place-in-Service Date and discounting the installments received after this date. If the project receives 51

cents or less or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

For mixed-finance projects that comply with the mixed-finance requirements of this notice, no further subsidy layering analysis will be required. For those projects that fail to comply, PHAs must (i) restructure the project so it complies with the requirements and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the mixed-finance requirements of this notice.

## IX. Monitoring

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.
- Whether the values were correctly determined to be inside or outside of the approvable range.
- If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.
- If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: September 22, 2014.

**Jemine A. Bryon,**

*Acting Assistant Secretary for Public and Indian Housing.*

## Appendix A

### HCA's Notice of Intent to Participate

[\_\_\_\_\_, 20\_\_]

U.S. Department of Housing and Urban Development  
451 7th Street, SW  
Room 4232  
Washington, DC 20410

By: Email:

*pih.financial.management.division@hud.gov*

### Re: HCA's Intent To Participate—Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban

Development that it intends to conduct Subsidy Layering Reviews pursuant to HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other federal, State, or local assistance does not result in excessive compensation. By signifying our intent to participate, the \_\_\_\_\_ (name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development, and 24 CFR Section 983.55.

The agency understands its responsibilities under the above cited statutes and the Guidelines. The agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent to Participate, the undersign acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or \_\_\_\_\_ (name of agency) informs the HUD, in writing, upon 30 days' notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the \_\_\_\_\_ (name of agency) certifies that, upon HUD approval, the \_\_\_\_\_ (name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:

[UNDERSIGNED NAME AND Title]  
[STREET ADDRESS]  
[CITY], [STATE] [ZIP]

Attention of: [NAME], [TITLE]

By Phone—[XXX-XXX-XXXX]

By Fax—[XXX-XXX-XXXX]

By Email—[email address]

[NAME OF Agency]

By:

Name:

Title:

The completed, signed, and dated Notice of Intent to Participate should be

sent as a PDF attachment to an email message addressed to Miguel Fontanez at *pih.financial.management.division@hud.gov*. The email message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the email please call (202) 708-2934.

## Appendix B

### HCA Certification

For purposes of the provision of Section 8 Project-Based Voucher Assistance authorized pursuant to 42 U.S.C. section 8(o)(13), section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 Project-Based Voucher Assistance provided by the United States Department of Housing and Urban Development to \_\_\_\_\_, located in \_\_\_\_\_ is not more than is necessary to provide affordable housing after taking into account other government assistance.

Name of HCA \_\_\_\_\_

Printed Name of Authorized HCA Certifying Official \_\_\_\_\_

Signature of Authorized HCA Certifying Official \_\_\_\_\_

Date \_\_\_\_\_

## Appendix C

### HUD Form 2880

<http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf>

## Appendix D

### DOCUMENTS TO BE SUBMITTED BY THE PHA TO THE APPLICABLE HCA OR HUD HEADQUARTERS FOR SUBSIDY LAYERING REVIEWS

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, etc. Sources should generally include only permanent financing. If



interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as "soft costs." Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder's profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to

the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement. However, proposal letters and letters of intent are not sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the "as is" value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an "as is" valuation.

6. Stabilized Operating Pro Forma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions, and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at \_\_\_\_\_ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the

amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement.

12. Identity of Interest Statement.

13. PHA commitment letter for project-based voucher assistance.

14. Proposed project-based voucher gross rent amounts.

**BILLING CODE 4210-67-P**



## Appendix E

## Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY				Appendix E
<b>Project Name, Sponsor and Phase Information</b>				
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>				
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>				
Number of units				
<b>SUMMARY: Subsidy Layering Guideline Standards (Note A)</b>				
1. Builder Profit/General Condition/Over-head	This Project	"Safe Harbor" Standard	"Ceiling" Standard	
2. Developer Fee		6%, 2%, 6%	14% Gen Cond + OH&P	
3. Net Equity Proceeds		12.0%	15.0%	
4. Debt Coverage Ratio		\$0.80	Market rate	
		1.10	1.45	
<b>Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)</b>				
(a) Gross LIHTC Equity Syndication Proceeds from Investor				<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
(b) Equity Proceeds Not Available for Project Uses				
(i) Bridge Financing Costs (on loans to be repaid by equity) (Note A)				
(A) Bridge loan interest				
(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)				
(ii) Other Syndication Fees and Expenses (Note B)				
(A) Ownership entity organizational and legal cost				
(B) Syndication fees paid from gross syndication proceeds				
(C) Tax credit fees (to LIHTC-awarding agency, etc.)				
(D) Other syndication fees and costs (accounting, cost certification, etc.)				
(E) Total deductions from equity syndication proceeds				-
(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project				
(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))				
(ii) Enter amount of annual tax credit allocation (from tax credit award letter):				
(iii) Multiply by 10 (LIHTC award amount is annual allocation per year for 10 years)		X	10	
(iv) Equals total LIHTC allocation to project over 10 years:			\$	-
(v) Multiplied by investor's ownership percentage:		X		
(vi) Equals LIHTC allocation to the investor:				
(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =				
<b>Calculation of Debt Coverage Ratio (guideline standard 4)</b>				
(a) Net Operating Income				
(i) Total Operating Income				
(ii) minus Total Operating Expenses				
(iii) Equals NOI				
(b) Debt Coverage Ratio				
(i) Debt Service				
(ii) Net Operating Income (4. (a)(iii) above) divided by Debt Service equals DCR:				
(c) Cash Flow				
(i) Annual Reserve contributions				
(ii) Cash Flow (4. a. iii minus 4. b. i minus 4. c. i)				
(iii) Cash Flow as a percentage of Expenses (4. c. ii divided by 4. a. ii)				
<b>Notes:</b>				
A. Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).				
B. Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include only those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.				

BILLING CODE 4210-67-C

**Appendix F****SOURCES AND USES STATEMENT****(Sample Format)****SOURCES:****Debt Sources:**

Mortgage—  
 Loans—  
 Other Loans (specify)—  
 Other (Specify)—

**Equity Sources:**

Grants available for project uses—  
 Estimated Net Syndication Proceeds—  
 Additional Owner Equity Necessary <sup>8</sup>—  
 Other Equity Sources (specify)  
 Total Sources: \$ \_\_\_\_\_

**PROJECT USES:**

Mortgage Replacement Cost Uses—  
 Total Land Improvements—  
 Total Structures—  
 General Requirements—  
 Builder's General Overhead—  
 Builder's Profit <sup>9</sup>—  
 Architects' Fees—  
 Bond Premium—  
 Other Fees—  
 Construction interest—  
 Taxes—  
 Examination Fee—  
 Inspection Fee—  
 Financing Fee—  
 FNMA/GNMA Fee—  
 Title & Recording—  
 Legal—  
 Organization—  
 Cost Certification Fee—  
 Contingency Reserve (Sub Rehab)—  
 BSPRA/SPRA (if applicable)—  
 Acquisition Costs—

**SUBTOTAL MORTGAGEABLE  
REPLACEMENT COST USES\$**

*Non-Mortgage Uses:*  
*(i.e. Uses Payable by Sources Other than  
 the Mortgage)*<sup>10</sup>

Working Capital Reserve or <sup>11</sup>—  
 Operating Deficit Reserve <sup>12</sup>—

**SUBTOTAL NON-MORTGAGEABLE  
USES—\$****TOTAL PROJECT USES\$****Estimated Net Syndication Proceeds:**

The HCA may use this format before  
 completing the Net Syndication  
 Proceeds estimate line above on the  
 Sources and Uses Statement, and must  
 use this format to reflect final allocation  
 determination assumptions.

Total Tax Credit Allocation—\$  
 Estimated Gross Syndication Proceeds—  
 \$

**Syndication Expenses:**

Accountant's Fee—\$  
 Syndicator's Fee—\$  
 Attorney's Fee <sup>13</sup>—\$  
 HCA Fee—\$  
 Organizational Expense <sup>14</sup>—\$  
 Other (Specify)—\$  
 Subtotal Syndication Expenses—\$<sup>15</sup>  
 Bridge Loan Costs less Interest (if  
 applicable)—\$

Adjustment for Early and Late  
 Installments (See Glossary, Net  
 Syndication Proceeds Estimate for  
 adjustment explanation)—\$

Total Reductions from Gross—\$  
 Estimated Net Syndication Proceeds—\$

[FR Doc. 2014-22971 Filed 9-25-14; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-HQ-IA-2014-N201;  
 FXIA1671090000-145-FF09A30000]

**Marine Mammals; Issuance of Permits**

**AGENCY:** Fish and Wildlife Service,  
 Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and  
 Wildlife Service (Service), have issued  
 the following permits to conduct certain  
 activities with marine mammals. We  
 issue these permits under Marine  
 Mammal Protection Act (MMPA).

**ADDRESSES:** Brenda Tapia, U.S. Fish and  
 Wildlife Service, Division of  
 Management Authority, Branch of  
 Permits, MS: IA, 5275 Leesburg Pike,  
 Falls Church, VA 22041; fax (703) 358-  
 2281; or email [DMAFR@fws.gov](mailto:DMAFR@fws.gov).

**FOR FURTHER INFORMATION CONTACT:**

Brenda Tapia, (703) 358-2104  
 (telephone); (703) 358-2280 (fax);  
[DMAFR@fws.gov](mailto:DMAFR@fws.gov) (email).

**SUPPLEMENTARY INFORMATION:** On the  
 dates below, as authorized by the  
 provisions of the ESA (16 U.S.C. 1531  
*et seq.*), as amended, and/or the MMPA,  
 as amended (16 U.S.C. 1361 *et seq.*), we  
 issued requested permits subject to  
 certain conditions set forth therein. For  
 each permit for an endangered species,  
 we found that (1) The application was  
 filed in good faith, (2) The granted  
 permit would not operate to the  
 disadvantage of the endangered species,  
 and (3) The granted permit would be  
 consistent with the purposes and policy  
 set forth in section 2 of the ESA.

**Marine Mammals**

Permit No.	Applicant	Receipt of application <b>Federal Register</b> notice	Permit issuance date
05664B .....	Bristol Bay Native Association .....	78 FR 50083; August 16, 2013 .....	September 10, 2014.
166346 .....	Matson's Laboratory .....	79 FR 35375; June 20, 2014 .....	September 5, 2014.

**Availability of Documents**

Documents and other information  
 submitted with these applications are  
 available for review, subject to the  
 requirements of the Privacy Act and

Freedom of Information Act, by any  
 party who submits a written request for  
 a copy of such documents to: U.S. Fish  
 and Wildlife Service, Division of  
 Management Authority, Branch of

Permits, MS: IA, 5275 Leesburg Pike,

<sup>8</sup> This line may be used for the additional amount  
 needed from the owner to balance sources against  
 uses when no additional monies are available from  
 other sources.

<sup>9</sup> Builder's Profit for non-Identity-of-Interest cases  
 (a SPRA allowance may also be added below). See  
 also Standard #1 safe harbor and ceiling standard  
 alternatives before completing. The Mortgage Use  
 lines relating to Builder's Profit and Developer's Fee  
 may be left blank if alternative funding standards  
 are used, and the amounts are reflected below.

<sup>10</sup> Note that syndication expenses are included  
 below in the estimation of *Net* tax credit proceeds  
 for this Statement, and therefore, are not included  
 within this Statement.

<sup>11</sup> Only Letter of Credit Costs may be included if  
 the reserve is funded by a Letter of Credit.

<sup>12</sup> Indicate the full cash reserve amount if funded  
 by LIHTC proceeds. Indicate only the costs of  
 obtaining a Letter of Credit for the reserve if funded  
 by a Letter of Credit at initial closing.

<sup>13</sup> Such fees may not duplicate legal nor title work  
 charges already recognized. Therefore, only fees

associated with the additional legal service  
 associated with LIHTC projects should be  
 recognized here by the HCA.

<sup>14</sup> Such expenses may not include Organizational  
 expenses which are already included, and should  
 not be duplicated. Therefore, only extraordinary  
 organizational expenses incurred because of the  
 additional LIHTC-associated application  
 preparation activities should be included here.

<sup>15</sup> See Guideline Standard #3 for separate safe  
 harbor and ceiling limitations for private and public  
 offerings.

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010-16707 Filed 7-8-10; 8:45 am]

**BILLING CODE 9111-23-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2008-0010]

#### National Fire Academy Board of Visitors

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Fire Academy Board of Visitors will meet by teleconference on August 2, 2010.

**DATES:** The teleconference will take place Monday, August 2, 2010, from 10 a.m. to 12 p.m., e.s.t. Comments must be submitted by July 30, 2010.

**ADDRESSES:** Members of the public who wish to obtain the call-in number, access code, and other information for participation in the public teleconference should contact Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010, as the number of teleconference lines is limited and available on a first-come, first served basis. Members of the public may also participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010. Comments must be identified by docket ID FEMA-2008-0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov). Include the docket ID in the subject line of the message.

- *Fax:* 703-483-2999.

- *Mail:* Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

*Instructions:* All submissions received must include the docket ID for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447-1117, fax (301) 447-1173, and e-mail [teressa.kaas@dhs.gov](mailto:teressa.kaas@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Fire Academy Board of Visitors will be holding a teleconference for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Academy update, Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the teleconference in a way that will, in her judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

**Information on Services for Individuals with Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teresa Kaas as soon as possible.

Dated: June 28, 2010.

**Denis G. Onieal,**

*Acting Deputy United States Fire Administrator, United States Fire Administration, Federal Emergency Management Agency.*

[FR Doc. 2010-16704 Filed 7-8-10; 8:45 am]

**BILLING CODE 9111-45-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5417-N-01]

### Administrative Guidelines; Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This document provides Administrative Guidelines which qualified Housing Credit Agencies (HCAs) as defined under Section 42 of the Internal Revenue Code of 1986 (IRC), must follow in implementing subsidy layering reviews in accordance with the requirements of Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA). In certain instances, described below, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act or HRA). The requirements in this Notice, which implement the requirements of Section 2835(a)(1)(M)(i) of HERA, do not supersede the subsidy layering requirements of other Federal programs.

Section 102(d) of the HUD Reform Act was enacted to ensure that Housing projects receiving HUD assistance do not receive excessive compensation by combining various forms of HUD program assistance with assistance from other Federal, State, or local agencies (other Government Assistance). Section 2835 (a)(1)(F) of HERA provides that for project-based voucher housing assistance payments (HAP) contracts for existing housing, a subsidy layering review in accordance with section 102(d) of the HRA shall not be required. Under HERA, when project-based voucher assistance is proposed for newly constructed and rehabilitated structures, subsidy layering reviews may be satisfied if the applicable State or local agency has conducted such a review. HUD has defined these agencies to be qualified housing credit agencies (HCA), which may include State housing finance agencies, participating jurisdictions under the HOME program, or other State housing agencies that meet the definition of a HCA as defined under Section 42 of the IRC of 1986.

This Notice sets forth the guidelines HCAs must use in conducting subsidy layering reviews for newly constructed and rehabilitated structures combining

other forms of government assistance, and Section 8 project-based voucher assistance.

**FOR FURTHER INFORMATION CONTACT:**

Michael Dennis, Deputy Director, Office of Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4228, Washington, DC 20410; telephone number 202-402-3882 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The Housing Economic Recovery Act of 2008*

HERA (Pub. L. 110-289) was enacted July 30, 2008. HERA made numerous revisions to the Section 8 project-based voucher program. On November 24, 2008 (73 FR 71037), HUD published a **Federal Register** Notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That Notice provides an overview of key provisions of HERA that affect HUD's public housing programs, and identifies those provisions that are self-implementing requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. The November 24, 2008, Notice states that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or Local agencies performing subsidy layering reviews for project-based voucher HAP contracts for new construction and rehabilitated projects is not self-implementing. The Notice states that guidance on how such reviews must be conducted would be forthcoming and this Notice provides such guidance.

*B. Section 102 of the HUD Reform Act of 1989*

24 CFR part 4 implements section 102 of the HRA, (42 U.S.C. 3545) and contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Section 4.13 of 24 CFR requires HUD to certify, in accordance with section 102(d) of the HRA, that assistance made available by the

Department for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. HERA eliminates the certification requirement of 24 CFR 4.13 for new construction and rehabilitated housing under the project-based voucher program where the applicable State or local agency has performed a subsidy layering review. Certification under section 102(d) of the HRA is still required, however where HUD conducts the review.

*C. Section 911 of the Housing Community Development Act of 1992*

Section 911 of the Housing Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (HCDA), allows State HCAs to perform subsidy layering review certifications to satisfy the requirements of section 102(d) of the HRA for projects utilizing or expecting to utilize low-income housing tax credits (LIHTCs). To date, however, the Department has not delegated its authority to HCAs for subsidy layering reviews required for covered projects receiving Section 8 project-based vouchers. While Section 911 of the HCDA is a discretionary provision that PIH has not implemented for projects receiving project-based voucher assistance, section 2835(a)(1)(F) of HERA is mandatory and shall be satisfied pursuant to HERA and these Administrative Guidelines, instead of Section 911.

**II. Certification**

*A. HUD's Certification Requirements Pursuant to 102(d) of the HUD Reform Act*

24 CFR 4.13 states that before HUD makes any assistance subject to the subpart available with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies no overlap of government subsidies when combining HUD housing assistance and forms of other Federal, State or local government assistance. Where a HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance,

section 2835(a)(1)(F) of HERA eliminates the need for the HRA section 102(d) certification requirement. However, HUD's obligation to certify in accordance with 102(d) of the HRA and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this Notice.

In addition, since a HCA is designated for the purpose of allocating and administering the LIHTC program under section 42 of IRC, and there will be cases where there are other forms of government assistance involved in proposed project-based voucher projects that do not include LIHTC, in those cases where the HCA is not able to conduct such reviews, HUD will conduct subsidy layering reviews and make the required HRA section 102(d) certification in accordance with 24 CFR 4.13 for such projects. HUD will also conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

*B. HCA Certification Under HERA*

With the enactment of HERA, a HRA section 102(d) certification is not required by the applicable HCA performing the review. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed or where one has already been performed, HCAs must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B).

**III. Intent To Participate**

A HCA must notify HUD of its intent to participate before any subsidy layering reviews are performed pursuant to this Notice. Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

*A. Letter to HUD*

An interested HCA must apprise HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by

sending a brief letter (Appendix A), executed by an authorized official of the HCA informing HUD that it (1) has reviewed these Administrative Guidelines; (2) understands its responsibilities under these Administrative Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via e-mail to the Section 8 Financial Management Division at HUD Headquarters at the following address: [pih.financial.management.division@hud.gov](mailto:pih.financial.management.division@hud.gov).

#### *B. HUD Acknowledgement*

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate has been acknowledged by HUD through the response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, for proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

#### *C. Revocation of Participation*

If HUD determines that a HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may revoke the HCA's authority to perform subsidy layering reviews for proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such determination.

#### *D. HUD Participation*

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HRA section 102(d) certification pursuant to such review, for projects in cases where the HCA's authority has been revoked by HUD; in cases where an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; and in those cases where project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review.

### **IV. Definitions**

*Category 1 Subsidy Layering Review*—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA will conduct the review and it will consider project-based voucher assistance.

*Category 2 Subsidy Layering Review*—Proposed project-based voucher HAP contracts where a subsidy layering review has been performed by an HCA without consideration of project-based voucher assistance.

*Covered Assistance and Affected HUD Programs* includes any contract, grant, loan, cooperative agreement or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. Assistance provided under Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is considered "covered assistance" under section 102(d) of the HRA for subsidy layering review purposes.

*Other government assistance* is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

*Substantial Compliance*—For purposes of making the HERA certification, a HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the Agency's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

### **V. Public Housing Authority (PHA) Responsibilities**

#### *A. When Subsidy Layering Reviews Are Required*

PHAs must request a subsidy layering review when a new construction or rehabilitation project has been selected pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance. As part of the selection process, the PHA must require information regarding all HUD and/or other Federal, State or local governmental assistance to be disclosed by the project owner. Form HUD-2880 (Appendix C) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA

must also inform the owner that if any information changes on the disclosure, either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the Owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

#### *B. Requesting Performance of Subsidy Layering Reviews*

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact the Office of Public Housing and Voucher Programs, Financial Management Division. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to HUD Headquarters for the subsidy layering review.

#### *C. Providing Documents Required for Review*

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for

quick reference by either HUD or the PHA.

#### *D. Subsidy Layering Review Timing and Outcome*

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement To Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (e.g., environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of PBV assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA's recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

## **VI. Subsidy Layering Review Categories—Overview**

### *A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA's Subsidy Layering Review Includes Proposed Project-Based Voucher Assistance*

Section 2835(a)(1)(F) of HERA provides that a subsidy layering review in accordance with section 102(d) of the HRA is not required if a subsidy layering review has been conducted by a qualified HCA. Section 42(m)(2) of the IRC mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its Section 42(m)(2) review, the HCA considers all Federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this Notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HRA section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over compensation. HCAs must therefore analyze the operating pro forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application

for or award of LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review, if such review substantially complies with the subsidy layering review requirements under this Notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this Notice, the HCA may make the required certification (Appendix B) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA can not make the required certification because the operation pro forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VII. B. of this Notice, and if necessary reduce the subsidy source within its control—(i.e., the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the projects viability without overcompensation. HUD will notify the PHA before any action to reduce the project based vouchers units due to issues of overcompensation.

### *B. Category 2—Proposed Project-Based Voucher HAP Contracts Where Subsidy Layering Review Has Been Performed by Qualified HCA Without Consideration of Project-Based Voucher Assistance*

Where a subsidy layering review has been conducted by a HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (e.g., project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the operational aspects of the project in accordance with Section VII. B. of these Guidelines.

Although project-based voucher projects under Category 2 must undergo a limited subsidy layering review, the HCA must still be able to certify when

combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there is any duplicative forms of assistance (*i.e.*, rental assistance from some other State, Federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

## VII. Subsidy Layering Review Guidelines—Procedural Description

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review, it will follow these Guidelines and use the Subsidy Layering Review Analysis form (Appendix E).

### A. Category 1 Subsidy Layering Reviews

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (*i.e.*, maintenance, operational, and replacement reserves) proposed for the project, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

#### 1. Development Standards—In General

##### a. Safe Harbor

Safe Harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional

justification and documentation are required.

##### b. Maximum Allowable Amounts

Maximum Allowable Amounts by comparison are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of PBV assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD and where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if, in the opinion of the reviewer, they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; whether over-head, builder's profit and developer's fee are also within a reasonable range, taking into account project size, characteristics, locations and risk factors.

#### 2. Equity Capital and Syndication Proceeds—In General

If the project involves the use of LIHTCs, the subsidy layering review must also include an analysis of the equity that is made available to the project through the syndication or sale of LIHTCs. The amount of equity capital contributed by investors to a project partnership shall not be less than the

amount generally contributed by investors in current market conditions, as determined by the HCA. The HCA must act during the development process to ensure that syndication proceeds going into the project are kept within an acceptable range.

#### 3. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances.

##### a. Standard (1)

General Condition safe harbor—six percent (6%) of construction contract amount.

##### b. Standard (2)

Over-head safe harbor—two percent (2%) of construction contract amount.

##### c. Standard (3)

Builder's Profit: Safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than 14% of the hard construction cost.

##### d. Standard (4)

Developer's fee: Safe harbor—twelve percent (12%) of the total development cost (profit and overhead);

The maximum allowable developer's fee is 15% of the project costs (profit and overhead).

#### 4. Net Syndication Proceeds

LIHTCs safe harbor shall be determined by the HCA conducting the review based on the equity market in its State. The HCA must carefully consider the equity market and establish and enforce reasonable equity pricing assumptions. If the amount of equity going into the project from the syndication of tax credits is below the current market price limit without satisfactory documentation of the reasons for the lower amounts, the PHA shall not enter into the AHAP with the owner.



#### 5. When Development Costs Are Excessive

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

##### a. HCA Performing Review

In cases where a HCA is performing the review, the HCA must reduce the subsidy source within its control, *i.e.*, the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

##### b. HUD Performing Review

Where HUD is performing the review and it is determined that after evaluating allowable sources and uses that the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of PBV assistance.

#### 6. When Development Costs Are Within Safe Harbor

If all Safe Harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operations pro forma before making its LIHTC allocation. If the Safe Harbor and operational standards (discussed in sub-section 8 directly below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

#### 7. Operations Standards

##### a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro forma and apply the standards discussed below and contained within the Operations section of Appendix E. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected Debt Cover Ratio (DCR) over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (*i.e.*, non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending

assumptions for their market area. Generally, operating expenses should be trended at 3% to 7% per year and rent increases should be trended at 2% to 5% per year for the first 5 years and 5% for each year thereafter.

The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VII.A.7.b. of this Notice.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses; pay all amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach.

If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for category 1 projects) or recommend to HUD the appropriate PBV subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

##### b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total

expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10% of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. If the cash-flow is greater than 10% of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10% of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

#### B. Category 2 Subsidy Layering Reviews

Projects falling within Category 2 shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year Operations Pro Forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B.). The Operating Standards outlined in section VII.A.7. above shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate PBV subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

#### VIII. Monitoring

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.



- Whether the values were correctly determined to be inside or outside of the approvable range.

- If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.

- If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: July 2, 2010.

**Milan Ozdinec,**

*Deputy Assistant Secretary for Office of Public Housing and Voucher Programs.*

#### **Appendix A—HCA's Notice of Intent To Participate**

[\_\_\_\_\_, 20\_\_]

U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 4232, Washington, DC 20410,  
By: E-mail: *pih.financial.management.division@hud.gov*.

#### **Re: HCA's Intent To Participate—Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts**

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban Development that it intends to conduct Subsidy Layering Reviews pursuant to HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other Federal, State, or Local assistance does not result in excessive compensation. By signifying our intent to participate, the \_\_\_\_\_ (name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—*Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, and 24 CFR Section 983.55*.

The agency understands its responsibilities under the above cited statutes and the Guidelines; the agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline Requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent To Participate, the undersigned acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or \_\_\_\_\_ (name of agency) informs HUD, in writing, upon 30 days notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the \_\_\_\_\_ (name of agency) certifies that, upon HUD approval, the \_\_\_\_\_ (name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:

[UNDERSIGNED NAME AND TITLE]

[STREET ADDRESS]

[CITY], [STATE] [ZIP]

Attention of: [NAME], [TITLE]

By Phone—[XXX-XXX-XXXX]

By Fax—[XXX-XXX-XXXX]

By E-mail—[e-mail address]

[NAME OF AGENCY]

By: \_\_\_\_\_

Name:

Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an e-mail message addressed to Miguel Fontanez at *pih.financial*.

*management.division@hud.gov*. The e-mail message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the e-mail please call (202) 708-2934.

#### **Appendix B—HCA Certification**

For purposes of the provision of Section 8 Project Based Voucher Assistance authorized pursuant to 42 U.S.C. 8(o)(13), pursuant to section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 project-based voucher assistance provided by the United States Department of Housing and Urban Development to \_\_\_\_\_, located in \_\_\_\_\_, is not more than is necessary to provide affordable housing after taking into account other government assistance.

\_\_\_\_\_  
Name of HCA

\_\_\_\_\_  
Printed Name of Authorized HCA  
Certifying Official

\_\_\_\_\_  
Signature of Authorized HCA Certifying  
Official

\_\_\_\_\_  
Date

#### **Appendix C—HUD Form 2880**

BILLING CODE 4210-67-P

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing  
and Urban Development

OMB Approval No. 2510-0011 (exp. 10/31/2012)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received
5. State the name and location (street address, City and State) of the project or activity:	

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). <input type="checkbox"/> Yes <input type="checkbox"/> No	2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of \$200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 <input type="checkbox"/> Yes <input type="checkbox"/> No.
---	--

If you answered "No" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. **However,** you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

- All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

(Note: Use Additional pages if necessary.)

## Certification

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature:  X	Date: (mm/dd/yyyy)
---------------------	--------------------

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

#### A. Coverage. You must complete this report if:

- (1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of \$200,000 during the fiscal year;
- (2) You are updating a prior report as discussed below; or
- (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

#### B. Update reports (filed by "Recipients" of HUD Assistance):

**General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

#### Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

#### Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to **either** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

#### Part II. Other Government Assistance and Expected Sources and Uses of Funds.

**A. Other Government Assistance.** This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

**B. Non-Government Assistance.** Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD **and any other source** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

### Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

**Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need

not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

### Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

**Appendix D—Documents To Be Submitted by the PHA to the Applicable HCA or HUD Headquarters for Subsidy Layering Reviews**

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, *etc.* Sources should generally include only permanent financing. If interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as “soft costs.” Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder’s profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate,

amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the “as is” value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an “as is” valuation.

6. Stabilized Operating Proforma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at \_\_\_\_ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement

12. Identity of Interest Statement

13. PHA commitment letter for project-based voucher assistance

14. Proposed project-based voucher gross rent amounts

## Appendix E

## Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY				Appendix E
<b>Project Name, Sponsor and Phase Information</b>				
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>				
<div style="border: 1px solid black; height: 20px; width: 100%;"></div>				
Number of units				
<b>SUMMARY: Subsidy Layering Guideline Standards (Note A)</b>				
	This Project	*Safe Harbor* Standard	*Ceiling* Standard	
1. Builder Profit/General Condition/Over-head		6%, 2%, 6%	14% Gen Cond + OH&P	
2. Developer Fee		12.0%	15.0%	
3. Net Equity Proceeds		\$0.80	Market rate	
4. Debt Coverage Ratio		1.10	1.45	
<b>Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)</b>				
(a) Gross LIHTC Equity Syndication Proceeds from Investor				<div style="border: 1px solid black; width: 100px; height: 20px;"></div>
(b) Equity Proceeds Not Available for Project Uses				
(i) Bridge Financing Costs (on loans to be repaid by equity) (Note A)				
(A) Bridge loan interest				
(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)				
(ii) Other Syndication Fees and Expenses (Note B)				
(A) Ownership entity organizational and legal cost				
(B) Syndication fees paid from gross syndication proceeds				
(C) Tax credit fees (to LIHTC-awarding agency, etc.)				
(D) Other syndication fees and costs (accounting, cost certification, etc.)				
(E) Total deductions from equity syndication proceeds				
(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project				
(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))				
(ii) Enter amount of annual tax credit allocation (from tax credit award letter):				
(iii) Multiply by 10 (LIHTC award amount is annual allocation per year for 10 years):				
(iv) Equals total LIHTC allocation to project over 10 years:				
(v) Multiplied by investor's ownership percentage:				
(vi) Equals LIHTC allocation to the investor:				
(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =				
<b>Calculation of Debt Coverage Ratio (guideline standard 4)</b>				
(a) Net Operating Income				
(i) Total Operating Income				
(ii) minus Total Operating Expenses				
(iii) Equals NOI				
(b) Debt Coverage Ratio				
(i) Debt Service				
(ii) Net Operating Income (4.(a)(iii) above) divided by Debt Service equals DCR:				
(c) Cash Flow				
(i) Annual Reserve contributions				
(ii) Cash Flow (4.a.iii minus 4.b.i minus 4.c.i)				
(iii) Cash Flow as a percentage of Expenses (4.c.ii divided by 4.a.ii)				
<b>Notes:</b>				
<b>A.</b> Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).				
<b>B.</b> Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include <u>only</u> those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.				

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Appendix F—Sources and Uses  
Statement (Sample Format)

## SOURCES

Debt Sources

Mortgage—

Loans—

Other Loans (specify)—

Other (Specify)—

## Equity Sources

Grants available for project uses—

Estimated Net Syndication Proceeds—

Additional Owner Equity Necessary<sup>1</sup>—

Other Equity Sources (specify)

Total Sources \$ \_\_\_\_\_

<sup>1</sup> This line may be used for the additional amount needed from the owner to balance sources against uses when no additional monies are available from other sources.

**Project Uses**

Mortgage Replacement Cost Uses—  
 Total Land Improvements—  
 Total Structures—  
 General Requirements—  
 Builder's General Overhead—  
 Builder's Profit <sup>2</sup>—  
 Architects' Fees—  
 Bond Premium—  
 Other Fees—  
 Construction interest—  
 Taxes—  
 Examination Fee—  
 Inspection Fee—  
 Financing Fee—  
 FNMA/GNMA Fee—  
 Title & Recording—  
 Legal—  
 Organization—  
 Cost Certification Fee—  
 Contingency Reserve (Sub Rehab)—  
 BSPRA/SPRA (if applicable)—  
 Acquisition Costs—

**Subtotal Mortgageable Replacement Cost Uses \$ \_\_\_\_\_****Non-Mortgage Uses**

(i.e. Uses Payable by Sources Other than the Mortgage) <sup>3</sup>

Working Capital Reserve or <sup>4</sup>—  
 Operating Deficit Reserve <sup>5</sup>—

**Subtotal Non-Mortgageable Uses \$ \_\_\_\_\_****Total Project Uses \$ \_\_\_\_\_****Estimated Net Syndication Proceeds**

The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.

Total Tax Credit Allocation-\$ \_\_\_\_\_  
 Estimated Gross Syndication Proceeds-\$ \_\_\_\_\_

**Syndication Expenses:**

Accountant's Fee-\$ \_\_\_\_\_  
 Syndicator's Fee-\$ \_\_\_\_\_  
 Attorney's Fee <sup>6</sup>-\$ \_\_\_\_\_

<sup>2</sup> Builder's Profit for non-Identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgage Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

<sup>3</sup> Note that syndication expenses are included below in the estimation of Net tax credit proceeds for this Statement, and therefore, are not included within this Statement.

<sup>4</sup> Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

<sup>5</sup> Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

<sup>6</sup> Such fees may not duplicate legal nor title work charges already recognized. Therefore, only fees associated with the additional legal service

HCA Fee-\$ \_\_\_\_\_  
 Organizational Expense <sup>7</sup>-\$ \_\_\_\_\_  
 Other (Specify)-\$ \_\_\_\_\_  
 Subtotal Syndication Expenses-\$ \_\_\_\_\_ <sup>8</sup>  
 Bridge Loan Costs less Interest (if applicable)-\$ \_\_\_\_\_  
 Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)-\$ \_\_\_\_\_  
 Total Reductions from Gross-\$ \_\_\_\_\_  
 Estimated Net Syndication Proceeds-\$ \_\_\_\_\_

[FR Doc. 2010-16827 Filed 7-8-10; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. 5378-N-03]

**Notice of Proposed Information Collection; Comment Request (Economic Opportunities for Low- and Very Low-Income Persons): Withdrawal of Notice**

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice, withdrawal.

**SUMMARY:** The Office of Fair Housing and Equal Opportunity, Economic Opportunity Division is announcing the withdrawal of the Economic Opportunity for Low- and Very Low-Income Persons (Section 3) proposed information collection published June 23, 2010. The proposed information collection materials are being withdrawn until final comments are received within HUD. Subsequent notice regarding these proposed information collection materials will be published at that time.

**DATES:** The withdrawal is effective July 9, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202-402-3468, (this is not a toll-free number). Hearing or speech-

associated with LIHTC projects should be recognized here by the HCA.

<sup>7</sup> Such expenses may not include Organizational expenses which are already included, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

<sup>8</sup> See Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.

impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8399.

**SUPPLEMENTARY INFORMATION:** This Notice is withdrawing the previous proposed information collection notice regarding Economic Opportunity for Low and Very Low-Income Persons (Section 3), published June 23, 2010. Recipient agencies should continue to use the current version of form HUD 60002 until further notice.

*Title of Proposed Notice:* Economic Opportunity for Low-and Very Low-Income Persons.

*Office:* Fair Housing and Equal Opportunity.

*OMB Control Number:* 2529-0043.

*Description of Information Collection:* This is a withdrawal of a proposed information collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 1, 2010.

Staci Gilliam Hampton,

Director, Economic Opportunity Division.

[FR Doc. 2010-16701 Filed 7-8-10; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5375-N-26]

**Federal Property Suitable as Facilities To Assist the Homeless**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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915 Capitol Mall, Suite 485  
Sacramento, CA 95814  
p (916) 654-6340  
f (916) 654-6033  
ctcac@treasurer.ca.gov  
www.treasurer.ca.gov/ctcac

### MEMBERS

JOHN CHIANG, CHAIRMAN  
State Treasurer

BETTY YEE  
State Controller

MICHAEL COHEN  
Director of Finance

**EXECUTIVE DIRECTOR**  
Mark Stivers

DATE: February 20, 2015  
TO: Low Income Housing Tax Credit Applicants  
FROM: Anthony Zeto, Development Section Chief  
SUBJECT: Subsidy Layering Review (SLR) Instructions and Checklist for Tax Credit Projects with Section 8 Project-Based Vouchers (PBV) Authorized Pursuant to 42 U.S.C. 8(o)(13), Section 2835(a)(1) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the HUD Reform Act of 1989, and in Accordance with HUD's Administrative Guidelines

The purpose of this optional subsidy layering review (SLR) process is to streamline the SLR review and complete it in a more timely manner for project applicants by incorporating the SLR documentation into the preliminary tax credit application (the application). The SLR checklist incorporated into this memorandum is an optional supplement to the application. This SLR checklist is intended for projects with Section 8 project-based voucher assistance (PBV), including HUD's Veterans Affairs Supportive Housing (VASH) program project-based vouchers and HUD's Rental Assistance Demonstration (RAD) program project-based vouchers, which are required to undergo a SLR.

Projects required to undergo a project-based voucher SLR may choose to provide all required documentation for the SLR as part of the application by providing the supplemental SLR documentation listed below in the application's checklist Tab 17 (or other tab of the application checklist as appropriate).

As it is optional to submit the SLR documentation as part of the application, applicants may choose to continue the standard practice of the Public Housing Authority (PHA) submitting the SLR documentation as a stand-alone document package after the project receives a reservation of tax credits. If there have not been any changes to the project as shown in the preliminary tax credit application, this supplemental checklist may still be used for the submission of the post-reservation, stand-alone SLR package. However, if the SLR documentation is submitted after the project receives a reservation of tax credit, and the project has changed, you must use the



complete/expanded SLR checklist, but any items on the complete/expanded SLR checklist that have not changed may be addressed by confirming that the particular SLR document provided in the preliminary tax credit application has not changed.

If you have any questions, please contact Jack Waegell at (916) 654-6340 or email at [Jwaegell@sto.ca.gov](mailto:Jwaegell@sto.ca.gov).

### Supplemental Checklist

1. Letter from the Public Housing Agency providing the project-based vouchers requesting that TCAC perform the subsidy layering review, and which acknowledges that the PHA has received a complete copy of the preliminary tax credit application including all of the documentation as listed in the tax credit application's checklist and the supplemental subsidy layering checklist items below (as applicable)
  2. Summary Information, including:
    - \_\_\_ HUD Field Office with oversight of the project's PBV subsidy (San Francisco or Los Angeles or other)
    - \_\_\_ HUD Field Office point of contact name, phone #, and address
    - \_\_\_ Public Housing Agency (PHA) providing the project-based vouchers (PBVs)
    - \_\_\_ Public Housing Agency's PHA Code (for example CA008)
    - \_\_\_ Safe harbor date by which you need TCAC to complete the subsidy layering review
  3. Appraisal Report, if not provided elsewhere in the application, establishing the "as is" value of the property before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based assistance.
  4. Historic Tax Credits (as applicable)
    - \_\_\_ Amount of Credit
  5. Equity Investment Commitment Letter, if available/executed
    - \_\_\_ Equity Contribution Schedule showing amount and timing (copy of Letter of Intent (LOI) and/or Limited Partnership Agreement (LPA), if executed/available).
- Note: The LOI and/or LPA should correspond to the TCAC Attachment 16 provided in Tab 16 of the preliminary tax credit application.*
6. Bridge Loan Details (as applicable)
  7. Standard Disclosure and Perjury Statement
    - \_\_\_ Form HUD-2880.

*Notes: Be sure to complete the top section of the HUD 2880 form with all of the requested information, and under #4 "Amount of HUD Assistance Requested/Received", a dollar figure is required, not the number of PBVs.*

*If Part II of the form is required to be completed, include the tax-exempt bonds (if any) and the low-income housing tax credits as part of the “Other Government Assistance”. You may need to put the information on an attachment since space on the form is limited.*

8. PHA commitment letter for PBV assistance, including contract rents paid to project, utility allowances, and gross rents by unit type

- ☐ If more than 25% of the units have PBV assistance, provide the basis for the exception to the 25% PBV limit. See 24 CFR 983.56
- ☐ Supportive Services Plan – qualifying families receive supportive services (as applicable)
- ☐ Units in Single Family Homes of 4 units or fewer (as applicable)
- ☐ Qualifying families - elderly or disabled (as applicable)
- ☐ Other (as applicable)

9. Proposed PBV gross rent amounts by unit type

- ☐ Narrative explanation for the derivation/determination/basis of the PBV contract rents
- ☐ Form HUD-92273
- ☐ Rent Comparability Study
- ☐ Other/additional basis for the project’s PBV contract rents determined by the Housing Authority, if applicable

10. Financing commitments

*Notes: In the preliminary tax credit application for non-competitive 4% projects, financing commitments are not required except for the tax-exempt bond documentation required in checklist Tab 15. As a result, 4% projects will typically need to provide the financing commitments as part of SLR documentation regardless of when the SLR package is submitted to TCAC. However, 9% competitive projects, with a few exceptions under TCAC Regulation Section 10325(f)(8), provide the financing commitments as part of the tax credit application either to meet the basic threshold requirement under TCAC Regulation Section 10325(f)(3) or for purposes of scoring competitive points under TCAC Regulation Section 10325(c), or both (checklist Tabs 15 & 20). If a 9% project’s SLR package is submitted to TCAC after the preliminary tax credit application and any of the sources for which commitments were provided in the preliminary tax credit application have changed or new commitments have been obtained, these updated/new commitments need to be provided in the SLR package.*

# **SUPPLEMENTAL DOCUMENT 3**

## **SUPPORTIVE SERVICES CRITERIA**

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Exhibit 1 – List of DHS-Approved Intensive Case Management Services Providers

Exhibit 2 – Sample Supportive Services Commitment Letter

This Supportive Services Criteria document delineates the standards required by the Los Angeles County Development Authority (LACDA) to provide comprehensive supportive services in permanent housing developments funded through the Notice of Funding Availability (NOFA). This document includes a list of DHS-Approved Intensive Case Management Services Providers as an exhibit.

The criteria consist of those services required for each target population at two project phases: NOFA Application for Funding Threshold Review and at construction finance closing, or loan closing. This document summarizes how the LACDA reviews and scores the Supportive Services Plans and supporting documentation of proposed projects.

In addition, this document describes how projects may partner with the Los Angeles County Department of Health Services (DHS) when housing populations that are eligible for DHS supportive services funding. The LACDA expects project teams to leverage this funding resource for homeless populations.

## **1. GENERAL**

Supportive Service Plans must address the Service Criteria for the project's target special needs population(s) - both Homeless Special Needs and Other Special Needs residents, who may not be homeless. Supportive Service Plans for projects with multiple target populations must address the Service Criteria for all target populations, including the general affordable population. The Plans must present a clear distinction between the staffing resources and supportive services allocated to each population, and which services are available to all. A lead service provider must be identified at the time of application.

### Partnering with Department of Health Services (DHS)

The LACDA is partnering with DHS, which administers the Housing for Health program, to provide permanent supportive housing options with wrap around Supportive Services for individuals and families experiencing homelessness across Los Angeles County. Projects seeking to serve Homeless Special Needs populations are required to partner with DHS as an Intensive Case Management Services (ICMS) provider. Lead service providers who are not already ICMS providers must respond to the DHS [Request for Statement of Qualifications](#) for Supportive Housing Services before they are approved as a supportive services provider for a NOFA-funded project. See Exhibit 1 for list of current ICMS providers. Contact Christin Doyle at DHS for more information: [CDoyle@dhs.lacounty.gov](mailto:CDoyle@dhs.lacounty.gov).

The project should recognize and reflect the DHS subsidy for units reserved for homeless households; therefore, the project's pro forma should not include any cash flow associated with supportive services for this unit type.

Projects receiving supportive services funding from DHS will be required to receive tenant referrals from CES. The final supportive services plan and budget will be negotiated with DHS approximately six months prior to project lease-up and will reflect the supportive

service needs of the actual tenants that DHS will refer into the project. **Therefore, projects with commitments under the DHS Master Services Agreement are not required to complete some questions in the H.1 Supportive Services Narrative, as indicated in the NOFA funding application and are not required to submit a supportive services plan for units housing homeless residents.**

#### Partnering with Department of Veterans Affairs (VA)

For projects serving homeless veterans that are receiving, or planning to receive, PB-VASH subsidies, the VA will coordinate supportive services and a supportive services plan is not required for these units.

#### Outcomes

Projects must adopt appropriate measurable outcomes and plan to track and evaluate outcomes data. Outcomes are what you expect to happen for the people served by your project. Outcome objectives, sometimes called outcome benchmarks or indicators, are measurable goals that identify how you know if you are achieving your desired results within specified time frames.

The County of Los Angeles is a partner in the United Way of Greater Los Angeles' Home for Good initiative, which is working to end chronic and veteran homelessness in Los Angeles County. Home for Good has adopted a set of Performance Goals and Indicators for permanent supportive housing. Accordingly, the LACDA requires that all funded projects monitor outcomes for special needs units using the following Home for Good Standards of Excellence:

Housing Stabilization: At least 90% of tenants retain permanent housing (remain in unit or exit to other permanent housing) at six months and 85% after one year.

Increase in Benefits: 100% of tenants assessed for eligible benefits (at a minimum Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI), General Relief (GR), CalWORKs, Veterans Administration (VA)); of those eligible, 95% apply within six months; of those applying, 90% received benefits within one year.

Tenant Satisfaction/Quality of Life: 80% of tenants who complete satisfaction surveys would recommend this housing to others in need.

Projects that include units for non-special needs populations are required to adopt the Home for Good outcomes above or establish outcome objectives in the same categories (Housing Stabilization, Increase in Benefits, and Tenant Satisfaction/Quality of Life) that are at least as stringent as the Home for Good outcomes.

#### HMIS Reporting Requirement

The LACDA recognizes the nexus between the special needs housing funded under this NOFA and the work to end homelessness accomplished by the four homeless Continuums of Care (CoC) in Los Angeles County. The LACDA further recognizes the importance of comprehensive data for the CoC to plan and accomplish their objectives. Accordingly,

applicants shall agree to enter any units reserved for homeless applicants into the HMIS system for the Continuum of Care in which the project is located, or other tracking systems/databases as required by other public agencies providing supportive services to the project.

## **2. PROJECT PHASES**

### **A. Threshold Review**

At threshold review, the Supportive Services Plan will be evaluated to ensure that the requisite application forms and supporting documentation have been submitted in a complete manner. The Supportive Services Plan consists of the following components, all of which are completed in the NOFA funding application:

- Supportive Services Narrative
- Supportive Services Staffing Budget
- Property Management Plan

The Supportive Services Plan must:

1. For each of the Services Required at the NOFA Application for Funding Threshold Review stage (see Section 6, Supportive Services Matrix), the Plan must:
  - (a) Include a detailed description of the service.
  - (b) Identify the service provider.
  - (c) Obtain a services commitment, e.g., MOU, commitment letter, for those services not provided by the lead service provider (see requirements in Section 2.B, Quality Review).
  - (d) Describe an appropriate transportation plan so residents can reasonably access services to be provided off-site.

Merely stating that residents will be referred to a service without providing an adequate description of the service, its provider, and transportation is not acceptable and will result in failure to pass threshold.

2. Include a formal agreement between the project sponsor and the lead service provider. In cases where the project sponsor and lead service provider are the same entity, include a signed statement from the Executive Director committing to providing services in the project.

### **B. Quality Review**

If the initial Supportive Services Plan does not fully address all Services Required at Loan Close, a Final Conditions List will require the applicant to describe how all services will be provided or present acceptable documentation as to why these services are not needed in the project. In order for these services to be considered “provided”, the Plan must:

1. Include a detailed description of each service.
2. Identify the service provider. Formal agreements or commitment letters must be in place for third-party service providers of both Services Required at NOFA Application Threshold and at Loan Close (see requirements below).

3. Describe an appropriate transportation plan so residents can reasonably access services to be provided off-site.

In order to treat DHS supportive services funds as a commitment, the lead service provider must be an Intensive Case Management Services (ICMS) provider with an active PSH work order with DHS by loan close.

In order to treat VA supportive service funds as a commitment, the project must have a VA commitment letter by loan close.

DHS may participate in the review of proposals that include DHS supportive services funds, and their evaluation will be included in the Final Conditions List. DHS may verify that the proposed provider is an ICMS provider with an active PSH work order or has begun the RFSQ process. Proposed providers who do not currently hold a Master Agreement with DHS should refer to the RFSQ link above for additional information on DHS requirements for eligible populations.

### **C. Project Review Committee**

The Final Conditions List may require funded projects to meet with the LACDA's Project Review Committee in refining the Supportive Services Plan.

### **D. Loan Closing**

All awarded projects will be required to provide a revised supportive services plan that addresses all issues identified in the Final Conditions List prior to execution of loan documents and release of funds. If there are unaddressed plan elements subsequent to loan closing, the LACDA will withhold funds until all issues are addressed to the satisfaction of staff.

### **E. Pre Lease-Up**

All Supportive Services Plans must go through a final review six months prior to lease-up to finalize the incorporation of the Final Conditions List. DHS will issue final approval of Supportive Services Plans for those projects in which it is a partner.

### **F. Lease-Up**

Projects must have a final Supportive Services Plan approved by the LACDA at the time lease-up commences. Any funds that are withheld at loan closing will be released upon resolution of any unaddressed plan elements at this time.

### **G. Monitoring**

The LACDA will monitor the supportive services of projects in operation. The lead service provider must comply with LACDA requirements regarding monitoring and must ensure that all service partners participate.



### 3. SERVICES PLAN REQUIREMENTS BY PROJECT PHASES

Phase	Requirements	Evaluation
Threshold Review	<ol style="list-style-type: none"> <li>1. All forms completed and all questions in the NOFA Application for Funding (Section H) answered.</li> <li>2. Formal agreement between applicant and lead service provider included.</li> <li>3. For each Service Required at NOFA Application Threshold: include a detailed description, identify the service provider, and for off-site services, describe an appropriate transportation plan for residents to access services.</li> <li>4. For Homeless Special Needs projects, the Lead Service Provider (LSP) is an ICMS provider with an active work order or has begun the RFSQ process.</li> <li>5. For Homeless Veteran projects, VA commitment letter for VASH is submitted. Projects that are in the process of applying for VASH will pass threshold on a conditional basis.</li> </ol>	<ul style="list-style-type: none"> <li>• Pass or Fail</li> </ul>
Quality Review	<ol style="list-style-type: none"> <li>1. Formal agreements for all services.</li> <li>2. For each service, include a detailed description, identify the service provider, and for off-site services, describe an appropriate transportation plan for residents to access services.</li> </ol>	<ul style="list-style-type: none"> <li>• Issue Final Conditions List for any services that were not appropriately addressed and to improve other areas of the Services Plan.</li> </ul>
Project Review Committee (if necessary)	If directed in Final Conditions List, meet with the Project Review Committee to refine the Service Plan and provide appropriate services.	<ul style="list-style-type: none"> <li>• Issue updated Final Conditions List.</li> </ul>
Prior to Loan Closing	<p>Submit Revised Services Plan per Final Conditions List, to include Services Required at Loan Close.</p> <p>Submit VA commitment for VASH units, if applicable.</p>	<ul style="list-style-type: none"> <li>• Issue updated Final Conditions List</li> <li>• May withhold loan funds if not completed before loan closing.</li> </ul>

Phase	Requirements	Evaluation
Pre Lease-Up (Six Months Prior to Leasing)	Submit Final Services Plan per updated Final Conditions List, if still outstanding.	<ul style="list-style-type: none"> <li>• Issue approval</li> <li>• DHS to issue final approval, if applicable</li> <li>• Release any withheld funds.</li> </ul>
Monitoring	Facilitate monitoring; require all service partners to cooperate with monitoring.	<ul style="list-style-type: none"> <li>• Issue monitoring report</li> </ul>

#### 4. STAFFING FOR SUPPORTIVE SERVICES

Services staff must be competent to provide the services necessary to meet residents' needs and must be trained and experienced in working with the property's target population(s). Education/training must include a master's degree in an appropriate discipline or equivalent work experience. For Homeless Special Needs projects, the minimum requirements to be qualified as an ICMS Case Manager are at least one year of experience working with homeless individuals and possess a social work/mental health related bachelor's degree, or have a minimum of two years of experience providing direct mental health or intensive case management services, unless otherwise approved by DHS.

Case management forms the core of the services in special needs housing projects and includes a mutually agreed upon plan of action to address multiple life challenges for each tenant. Staff will engage with each resident to jointly develop a service plan, including referrals to service providers, and follow up on the outcome of the referrals. Services staff must therefore be knowledgeable about available local resources.

The ratio of staff-to-residents must be appropriate to the supportive service needs of the anticipated residents. For Homeless Special Needs projects, DHS requires Case Management to be provided at 1:20 staff-to-client ratio for single adult households and 1:15 for families with children households. For general affordable units, a 1:40 to 1:75 staff-to-client ratio is required.

Property management combined with the presence of effective services staff with appropriate training is critical to the development's success. The services staff must act as an effective liaison between property management and the residents.

Staffing must include 24-hour on-site or on-call property management, service staff, or security staff.

## **5. SUPPORTIVE SERVICES PROGRAM REQUIREMENTS**

Service providers must ensure that:

- Service provision is flexible and responsive to residents' needs.
- Services are culturally-specific and linguistically-appropriate.

All projects are required to have written policies and procedures and to train staff on those policies and procedures covering:

- Drug and/or alcohol use on-site and off-site, including steps to deal with relapsing residents to ensure their ability to remain in the housing.
- Payment of rent by residents during periods of hospitalization.
- Protecting the privacy and confidentiality of residents.
- Assisting applicants and residents in making reasonable accommodation requests, both of property management and outside entities, such as housing authorities, to ensure that persons with disabilities have access to and can maintain housing.
- Ensuring the safety and security of staff and residents, including instances of violence and the sale and use of controlled and/or illegal drugs/substances.
- Initial and periodic training in the appropriate and immediate response to tenant crises, such as when tenants become a danger to themselves or others.
- Initial and periodic training in the operator's program philosophy, values, and principles, including those regarding relapse, substance use on-site, and harm reduction. Projects with federal funding (e.g., project-based Section 8 rental assistance) are exempt from harm reduction requirements that conflict with federal drug laws.
- Grievance procedures.
- Supporting and promoting Voluntary Moving On practices, when resources permit, to help special needs tenants to voluntarily relocate to alternative affordable housing in the community with lower intensity services.

## 6. SERVICES CRITERIA MATRIX AND SERVICES DEFINITIONS

	HOMELESS SPECIAL NEEDS	OTHER SPECIAL NEEDS POPULATIONS			AFFORDABLE
	Homeless (All Subpopulations)	HIV/AIDS	Develop. Disabled	TAY	Affordable
Case Management	Services covered by ICMS.	APP	APP	APP	LC
Mental Health Care		APP	APP	APP	LC
Substance Use Services		APP	APP	APP	LC
Education		LC	LC	APP	LC
Employment & Training		LC	LC	APP	LC
Life Skills		LC	APP	APP	LC
Physical Health Care		APP	APP	APP	LC
Benefits Assistance		LC	LC	LC	LC
Representative Payee		LC	APP	LC	LC
Legal Assistance		LC	LC	LC	LC
Child Care (if applicable)		LC	LC	LC	LC
Adult Day Care		LC	APP		
Info & Referral					LC

App: Service must be provided at time of application submission in order to pass Threshold phase.

LC: Service must be provided by Loan Close or must document why the service is not needed.

Gray cell: Not applicable

In order for the service to be considered “provided” by Application or Loan Close, the Plan must:

- Include a detailed description of the service;
- Identify the service provider;
- Obtain a services commitment, e.g., MOU, commitment letter (see requirements in Section 2.B, Quality Review); and
- Describe an appropriate transportation plan so residents can reasonably access services to be provided off-site.

### A. Services Definitions

The following are descriptions of the services listed in the Services Criteria Matrix. Refer to the Matrix to determine which services are required in the services plan at Application and which are required at Loan Close, based on the tenant population(s).

Service plans that do not provide the appropriate Services Required at NOFA Application Threshold will not pass threshold review. To be considered provided, the Plan and documentation must meet the definition of “provided” described in 2.B above.

All services are voluntary for tenants. Participation in services may not be a condition of tenancy.

**Case Management:** The primary service provided to tenants on-site. Case managers work with tenants to jointly develop individualized service plans, link tenants to supportive services, e.g., mental health care, and to basic necessities, e.g., food banks/meal delivery, and coordinate with property management staff to support tenant stability in housing. Case management also includes the following activities:

- Individualized Service Plans: Services staff conduct an initial assessment and work jointly with each tenant to develop an individualized service plan (ISP) to establish goals and corresponding action items to achieve them. Assessments and ISPs should be updated regularly.
- Housing Outplacement: Linkage to alternative housing options for tenants that require either a higher or lower level of care based on changes to their functioning or health status. Examples of other housing types include board and care, residential treatment, assisted living facilities, or affordable housing.
- End of Life Counseling: Support for tenants diagnosed with terminal or life-threatening medical conditions and/or who are of advanced age.

**Mental Health Care:** The provision of mental health interventions that meet the tenants' needs, such as individual/family therapy, group therapy, crisis intervention, and support groups.

**Substance Use Services:** Services to assist tenants experiencing substance use disorders in an outpatient setting, such as individual therapy, group therapy, relapse prevention, and support groups. Tenants may also need access to residential substance use treatment. Both substance use services in an outpatient setting and access to residential substance use treatment must be addressed.

**Educational Services:** Services to promote tenants' formal educational growth, as appropriate to the age of the tenant population, such as GED classes, school enrollment, and tutoring support. This service is separate from workshops or classes on life skills topics that fall under the Life Skills service category for purposes of this NOFA.

**Employment Services:** Services to support tenants in securing employment, such as job skills training, resume writing, job placement, and job retention services.

**Life Skills:** Training tenants in various life skills, such as household maintenance, nutrition, cooking, money management, and parenting education, in order to promote independence and successful long-term tenancies. The training can occur one-on-one or in group settings.

**Physical Health Care:** The provision of physical health services, such as primary health care, dental care, and vision care. Physical health care also includes:

- **Medication Management:** A range of services to assist tenants with their prescription medications, including a review of prescriptions and side effects, patient education, and ensuring compliance with the medication regimen

**Benefits Assistance:** Services to assist tenants with the process to secure government benefits for which they are eligible, such as Supplemental Security Income (SSI) and CalFRESH, including collecting documentation and making appeals. Benefits assistance also includes:

- **Attendant Care:** In-home assistance to tenants in need of help performing activities of daily living, such as housekeeping, shopping, and cooking. Attendant care can be provided through the County's In-Home Supportive Services program.

**Representative Payee:** Financial management for those tenants identified by the Social Security Administration as needing help in managing their benefits. The representative payee ensures that the client uses monthly benefits to pay for basic needs and medical needs before addressing personal needs.

**Legal Assistance:** Services provided by attorneys to assist tenants with legal matters in areas such as family law, government benefits, and employment.

**Child Care:** Access to free or low-cost child care programs to support parents with children of ages 0 – 5, or afterschool care for school-age children.

**Adult Day Care:** Community-based facilities that provide daytime care and supervision, including social activities, educational programs, health monitoring and exercise, to older or disabled adults.

**Information & Referral:** Linkage to supportive services and other resources in the community.

## **7. SPECIAL NEEDS POPULATIONS**

### **HOMELESS SPECIAL NEEDS POPULATION**

**Program Objective.** Permanent supportive housing for homeless households may target individuals, families and/or families with children experiencing homelessness. The range of services to be provided will vary depending on the particular subpopulation of homeless households served, e.g., chronically homeless, veterans, seniors. All permanent housing developments for the homeless shall provide safe, clean, affordable housing to provide stability to residents who will likely have experienced a great deal of disorder while homeless. It is critical that the housing provider foster a sense of community and support for its residents.

Service providers must assist residents in adjusting to their new living arrangements, help them successfully maintain independent living, and coordinate services to meet their needs, including physical health, mental health, substance use treatment, and other services that support housing retention. Projects serving homeless families with children shall ensure that supportive services target both parents and children.

Residents served must meet HUD's homeless definition. The full definition can be accessed at

[https://www.hudexchange.info/resources/documents/HEARTH\\_HomelessDefinition\\_FinalRule.pdf](https://www.hudexchange.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf)

The LACDA is using the category 1 definition of homelessness for the purposes of this NOFA:

- (1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - (i) Has a primary nighttime residence that is a public or private place not meant for human habitation;
  - (ii) Is living in a publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); or
  - (iii) Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution

If HUD changes its homeless definition, providers are required to adhere to the definition in effect when leasing to new tenants.

Projects may also choose to target specific homeless subpopulations, including:

#### *Chronically Homeless*

The HUD chronically homeless definition can be accessed at

(<https://www.hudexchange.info/resources/documents/Defining-Chronically-Homeless-Final-Rule.pdf>) is:

An abbreviated version of the chronically homeless definition is below. Consult the link above for the exact definition.

- 1) An individual who:
  - A. Has a disability
  - B. Has lived in a shelter, safe haven, or place not meant for human habitation for:
    - i. 12 continuous months with no breaks, or
    - ii. 4 separate occasions in the last three years that total 12 months.

- C. Occasions are separated by at least consecutive seven nights. Stays in an institution of fewer than 90 days do not constitute a break.
- 2) An individual who has been residing in an institutional care facility for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or
  - 3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraphs (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

If HUD changes its homeless definition, providers are required to adhere to the definition in effect when leasing to new tenants.

#### *Homeless Veterans*

“Veteran” means a person who served in the active military, naval, air service, or Coast Guard, including the National Guard and Reserve. For the PBVASH program, the VA has established a priority for chronically homeless. The definition can be accessed at: (<https://www.hudexchange.info/resources/documents/Defining-Chronically-Homeless-Final-Rule.pdf>)

#### *Homeless Transition Age Youth (TAY)*

Homeless TAY are individuals or families between the ages of 18 – 24 who meet the HUD Category 1 definition of homelessness, noted above.

The full definition can be accessed at [https://www.hudexchange.info/resources/documents/HEARTH\\_HomelessDefinition\\_FinalRule.pdf](https://www.hudexchange.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf)

#### *Persons Fleeing Domestic Violence or Other Life-Threatening Conditions*

The LACDA is using the category 4 definition of homelessness. The definition can be accessed at [https://www.hudexchange.info/resources/documents/HEARTH\\_HomelessDefinition\\_FinalRule.pdf](https://www.hudexchange.info/resources/documents/HEARTH_HomelessDefinition_FinalRule.pdf)

An abbreviated version of the definition is below. Consult the link above for the exact definition.

Any individual or family who:

- (i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other life-threatening conditions that relate to violence against the individual or family member, such as human trafficking;
- (ii) Has no other residence; and
- (iii) Lacks the resources or support networks to obtain other permanent housing.



### *Homeless Seniors (aged 55+)*

In addition to the standard services for homeless residents, projects serving homeless seniors shall be designed to enable senior residents to remain independent, mentally alert, and engaged as they age in place. In order to allow tenants to age in place and remain in independent living for as long as possible, housing operators shall work with tenants to determine what accommodations can be made and services provided to allow them to remain in their units as their needs change. If and when a tenant's needs exceed what the housing operator is equipped to provide (directly or through partnerships), and the tenant can no longer safely live in his or her unit, housing operators shall make accessible to the tenant information and counseling regarding alternative care options and shall work closely with the tenant to establish a transition plan.

### *Homeless Persons with Mental Illnesses*

Permanent housing developments must assist persons with mental illnesses in maintaining long-term, permanent housing. Residential providers shall assist residents in adjusting to their new living arrangements and successfully maintain independent living. Providers shall also coordinate residents' housing and service needs. Some residents may require supportive services to address a variety of special needs in addition to mental illness, such as substance use disorders and developmental disabilities, while others may not require these specialized services.

## **OTHER SPECIAL NEEDS POPULATIONS**

### **A. Persons Living with HIV/AIDS**

**Program Objective.** Permanent housing developments must assist persons living with HIV/AIDS (PLWHA) and their families in maintaining long-term, permanent housing. Residential providers shall assist residents in adjusting to their new living arrangements and successfully maintain independent living. Providers shall also coordinate residents' housing, service, and other basic needs.

Some residents may require supportive services to address a variety of special needs in addition to HIV/AIDS, such as mental illness or substance abuse, while others may not require these specialized services.

Residents should also be connected to LA County's Division of HIV and STD Programs' Medical Care Coordination (MCC) services, accessed through medical homes, to promote improved health outcomes for PLWHA. Services for residents should also incorporate education on HIV/AIDS-specific issues, such as licit and illicit drug interactions, medical complications of substance use, and health and self-care practices.

## **B. Persons with Developmental Disabilities**

**Program Objective.** Residential providers shall provide clean, safe, affordable housing for persons with developmental disabilities. Residential providers shall partner with the regional center case manager and the regional center contracted service providers (Independent Living Services or Supported Living Services) who will assist residents in adjusting to and successfully maintaining their independent or supported living arrangements and the overall coordination of their housing and service needs. (Regional centers are private non-profit agencies under contract to, and receiving funds from, the State of California to assist persons with developmental disabilities to have access to the services and supports best suited to them throughout their lifetimes.)

Applicants must recognize the specific needs of persons with developmental disabilities, who demonstrate a variety of levels of self-care skills, physical coordination and mobility, and/or disruptive or self-injurious behavior.

State of California Definition of Developmental Disability (CA Welfare and Institutions Code Section 4512(a)): “Developmental disability” means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability but shall not include other handicapping conditions that are solely physical in nature.

**Collaboration.** Contact the community services department at the appropriate regional center to inquire about housing needs of individuals with developmental disabilities in the area. Technical assistance may be available from the regional center in whose catchment area the development will be located. The proposer shall work with the regional center and residents’ chosen service providers.

## **C. Transition Age Youth (TAY)**

**Program Objective.** Permanent housing programs for transition age youth, 18 – 24 years of age, offer a vital opportunity to offset limited support networks, incomes, credit, rental history, and exposure to living independently with an opportunity to become stable in a safe, affordable housing setting that is integrated with specialized supportive services. These programs offer youth a chance to address issues that may have developed during their diverse and sometimes turbulent individual histories. In turn, permanent housing improves outcomes as related to education, employment, health care, and overall well-being. Proposers shall provide a safe and nurturing environment for all residents. Proposers must also promote a sense of community in their developments to

mitigate the sense of isolation and lack of support that remain common experiences among this population.

TAY shall be provided with permanent housing that fosters independence and self-reliance, but still allows access to additional supportive services that are appropriate to their particular, individualized needs.

These programs are lease-based, where youth are treated as residents and assume all the rights and responsibilities associated with tenant-based housing. Though youth are not forced to move out prematurely, they shall be assisted if ultimately, they seek other permanent housing arrangements and to establish themselves as self-supporting. In these cases, it is critical that the proposer arrange to provide follow-up services to facilitate a smooth transition and sufficient access to services so that the youth will remain stable and meet tenancy requirements.

**EXHIBIT 1**  
**LIST OF DHS-APPROVED INTENSIVE CASE MANAGEMENT SERVICES**  
**PROVIDERS**

**DHS Housing For Health: Approved ICMS - PSH Providers as of 10/1/2019**

A Community of Friends	Los Angeles LGBT Center
Affordable Living for the Aging	Lutheran Social Services of Southern California
Alcott Center for Mental Health Services	Mental Health America of Los Angeles
Alliance for Housing and Healing	New Directions Housing, LLC
American Family Housing	Ocean Park Community Center, DBA The People Concern
Ascencia	Partners in Care Foundation, Inc
Bridge to Home SCV	PATH
Brilliant Corners	PATH Ventures
Catholic Charities of Los Angeles, Inc.	Penny Lane Centers
Century Villages at Cabrillo, Inc.	San Fernando Valley Community Mental Health Center, Inc.
Coalition for Responsible Community Development	Sanctuary of Hope
Downtown Womens Center	Single Room Occupancy Housing Corporation
East Valley Community Health Center, Inc.	Southern California Health & Rehabilitation Program
Emotional Health Association, dba SHARE! The Self-Help And Recovery Exchange	Special Service For Groups, Inc. (SSG)
Epidaurus DBA Amity Foundation	St. Annes Maternity Home
Exodus Recovery, Inc.	St. Johns Well Child and Family Center, Inc.
Gettlove	St. Joseph Center
Good Seed Community Development Corporation	Step Up On Second Street, Inc.
Harbor Interfaith Services	Tarzana Treatment Centers, Inc.
Helpline Youth Counseling, Inc.	Telecare Corporation
Heritage Clinic & the Community Assistance Program for Seniors	The Catalyst Foundation
Homeless Health Care Los Angeles	The Illumination Foundation
Housing Works	The Salvation Army
Imagine Los Angeles, Inc.	The Skid Row Housing Trust
Jovenes, Inc.	The Whole Child - Mental Health & Housing Services
JSI Acquisition, Inc. DBA Libertana Home Health Care	Turning Point Alcohol & Drug Education Program, Inc.
Kedren Community Health Center, Inc.	Union Station Homeless Services
Kingdom Causes Bellflower	United States Veterans Initiative
Koreatown Youth and Community Center, Inc.	Upward Bound House
L.A. Family Housing Corporation	Venice Community Housing Corporation
Life Skills Training and Educational Programs, Inc. (LifeSTEPS)	Volunteers of America of Los Angeles
Los Angeles Christian Health Centers	Watts Labor Community Action Committee

**EXHIBIT 2**  
**SAMPLE SUPPORTIVE SERVICES COMMITMENT LETTER**

[Letterhead of Agency Committing Service]

[Date]

[Applicant Name]

[Address]

**SUPPORTIVE SERVICES COMMITMENT FOR [PROJECT NAME]**

Dear [Applicant Contact Name],

I am pleased to provide this letter of commitment for [Applicant & Project Name], a [XX] unit [type of project: e.g. Permanent Supportive Housing; Mixed Affordable & Permanent Supportive Housing] for [target population(s)] located at [address].

[Description of Agency Committing Service].

[Agency Committing Service] is committed to providing [description of the services to be provided] to the [Project Name]'s [target population(s)] who will be able to access the service]. Services will be available to [Project Name]'s residents [days and hours during which services will be provided] at [location where services will be available].

The term of this agreement shall be for [duration of the agreement].

We look forward to partnering with you on this project.

Sincerely,

[Contact Name of Agency Committing Service]

# **SUPPLEMENTAL DOCUMENT 4**

## **ARCHITECTURAL DESIGN REQUIREMENTS**



# ARCHITECTURAL DESIGN REQUIREMENTS

Minimum Design and Construction Standards  
For New Construction and Rehabilitation Projects

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## **INTRODUCTION**

These Architectural Design Requirements establish and delineate the intent of the Los Angeles County Development Authority (LACDA) to produce high quality affordable housing. The Notice of Funding Availability (NOFA) and the Architectural Design Requirements apply to all new construction and rehabilitation projects including those eligible for both 9% Low-Income Housing Tax Credit financing by the California Tax Credit Allocation Committee (TCAC) and 4% tax-exempt bond financing.

For purposes of this NOFA, a rehabilitation project shall involve modifications to exteriors and interiors where the total construction hard costs must account for at least \$40,000 per unit.

Adherence to these requirements is required for all projects receiving financing. Staff will work with all project teams to ensure compliance during all phases of review described herein, and that the values expressed in the Architectural Design Requirements are realized in completed work.

Within the project, the design of the Special Needs and affordable units shall not be any different than other project units. The quality of spaces and materials, number and size of rooms, amount of closet space, amenities available, etc., shall be the same regardless of the population served.

These requirements are not a substitute for applicable building codes and applicants are expected to comply with all code requirements. If there is duplication in these instructions, it is to emphasize elements on which the LACDA places high value.

This document is not intended to limit the designers' creativity to any particular solution, instead, it is intended to promote and assist in the development of well-designed, quality, affordable housing in a cost-effective manner. Designers and development teams are encouraged to find innovative and creative design solutions to affordable housing projects.

## **I. DESIGN REVIEW PROCESS & NOFA APPLICATION SUBMITTAL REQUIREMENTS**

The design review process is initiated when a developer submits a completed NOFA application.

Design review continues throughout the application process, with reviews occurring at the following phases:

- NOFA Application;
- Design Review Meeting;
- Loan Committee Approval; and
- Prior to Construction Completion.

Applications are first reviewed for completeness during a Threshold Review, which contains required architectural design submittals. Threshold Review items are identified in NOFA application materials and below in the section titled “Required NOFA Application Submittals – Threshold Items”.

Upon notice of a funding award, the LACDA will contact all project teams to schedule a mandatory Schematic Design Review Meeting. The purpose of this meeting is to discuss the initial design review, establish project expectations, and confirm the design team’s response to design review comments. The Design Review Meeting is intended to address any major design issues with projects and to discuss design options that can help project teams meet NOFA architectural design requirements. The developer, the developer’s architect, the LACDA’s project manager, and the LACDA’s consulting architect will attend this meeting.

After this meeting, the project will proceed through further design review(s) as plans evolve to meet milestones for the Loan Committee review phase and eventually complete the design review process prior to closing the project’s construction financing. The goal of the design review process is to quickly and efficiently complete the review, minimizing the time spent by both the developer’s design team and LACDA staff. The LACDA staff will work with the development team to ensure a revised set of plans and project specifications are submitted and reviewed in a timely manner. The LACDA’s Design Review Sheet will be used by the design team to address reviewer issues and remarks resulting from the architectural design review process.

Not all of the design criteria will be applicable to all projects, and some projects may require additional criteria. All applicable codes and ordinances will apply. Please note that codes and ordinances are minimum legally required standards and that the LACDA Architectural Design Requirements are specified where LACDA requirements exceed and/or are supplemental to minimum code requirements.

The following chart summarizes the design review process for projects that are recommended for funding award:

DESIGN REVIEW PROCESS			
PHASE	REVIEW	SUBMITTALS	TIMEFRAME
NOFA Application	Threshold Review/ evaluation of schematic design	Schematic Design	Results provided approximately 45 days following application submission.
Design Review Meeting	Review responses to Threshold Review	Resubmittals of NOFA documents with corrections.	Meeting scheduled after funding award. Project teams respond to design review comments with updated plans and Design Compliance Review spreadsheet.
Loan Committee Approval	Design development reviews – up to three (3) total	Design Compliance Review spreadsheet, initial CASp report, construction documents and specs.	Approximately three to four months before construction loan closing.
Prior to Construction Completion	Construction verification documents	Final CASp report, final energy model and TCAC Sustainable Building Methods workbook	Once Design Compliance Review is complete, a Field Verification Report is issued.

## **A. NOFA Application Phase: Threshold Review/Evaluation of Schematic Design**

### **THRESHOLD REVIEW**

Project applications are evaluated and determined to either meet or not meet the NOFA program and threshold requirements for architectural design. Should an application pass Threshold Review, it will move forward through the Design Compliance Review period, which must be completed prior to construction loan financing.

### **TECHNICAL REVIEW**

Although the architectural design will not be scored, projects must satisfy the minimum requirements at application to be considered for funding.

### **REQUIRED NOFA APPLICATION SUBMITTALS – THRESHOLD ITEMS**

The required application design submittals (listed below and in the Application checklist) are required for consideration for funding. A Design Score Sheet will be provided to applicants along with the Notice of Scoring Results for the overall project. The Design Score Sheet includes the Design Compliance Review Report, which will reflect in detail the project's level of adherence to the Architectural Design Requirements.

Applicants for projects located in jurisdictions with a rigorous design review process that involves public comment are responsible for identifying this process in the Design Narrative of the NOFA application. This narrative must also state whether the jurisdiction's design review process resulted in any deviations from the LACDA's requirements.

Project teams are required to address all architectural design issues identified during the application scoring process prior to release of all loan funds. The LACDA may withhold loan funds until all issues are addressed to the reasonable satisfaction of staff.

Architectural drawings shall demonstrate compliance with the Architectural Design Requirements and, at minimum, must be at schematic design level for NOFA submission. All drawings and plans shall be titled and dated, drawn to scale, include a written and graphic scale, and a north arrow. PDF documents must be of high enough quality so that architectural features and colors are clearly legible.

Project submittals at the NOFA application stage shall include, at minimum, the following:

1. Title sheet that includes:
  - a. An index of all drawings submitted.
  - b. A project description including, but not limited to:
    - Construction and occupancy type.
    - Lot coverage, floor area ratio, and density.
    - Unit breakdown (unit mix).
    - Building zoning code analysis.

- Setbacks, variances.
- Parking requirements and parking provided.
  - 1) Include total number of parking spaces provided.
  - 2) Include total number of parking spaces required.
  - 3) Include total number of accessible parking spaces provided (van and standard).
  - 4) Include total number of accessible parking spaces required (van and standard).
- Electric Vehicle requirements (if applicable).
  - 1) Indicate parking spaces planned for future EV charger installation.
  - 2) Indicate Electric Vehicle Charging Station(s) (EVCS) where EV Charger will actually be installed.
- Indicate total number of accessible EVCS (van, standard, and ambulatory).  
 A table identifying which unit numbers will satisfy accessible unit requirements (A minimum of 10% mobility units and 4% communication feature units) as well as any units satisfying the requirements for Universal Design (where applicable). This table must be clearly indicated in the title sheet.

2. Vicinity Map.

3. Site Survey.

4. Site Plan (1/16" scale minimum) that includes:

- a. Property line, adjacent streets, and the approximate location and number of stories of buildings on adjacent sites to provide sense of the local environment.

5. Landscape plan with conceptual plant list showing a minimum of 75% of plants (by area and clearly indicated in a table) are selected from a published drought-tolerant plant list, or the local jurisdiction's drought-tolerant list, if required. If a landscape plan is not yet developed at the time of the NOFA application, a statement acknowledging this requirement is sufficient.

6. Floor Plan(s) (1/8" scale minimum) that includes:

- a. Major project amenities (community room, recreation room, etc.);
- b. Enlarged floor plans of all proposed unit types, including parking plans, ground floor plan with site context, and roof plan showing screened mechanical equipment and any renewable energy equipment.
- c. Indicate which units will satisfy requirements for mobility and communication feature accessible units, as well as units satisfying the requirements for Universal Design (where applicable). This information shall be included on the architectural drawing coversheet, along with the project and unit count information.
- d. Indication of required accessible paths of travel.

7. Unit Plan(s) (1/4" scale minimum) that includes:

- a. Square footage of unit calculated from the interior of the unit exterior and demising walls.

- b. Interior dimensions of all livable spaces.
  - c. Furniture layout, including required amenities such as trash/recycling and required storage.
  - d. Indication of required accessible path of travel.
8. All exterior elevations (1/8" scale minimum) that includes adjacent grade up to the property line, street, or 20 feet beyond building (for sites without nearby property lines).
9. At least two (2) major sections (1/8" scale minimum).
10. A signed and dated construction cost estimate.
11. Rehabilitation projects only:
- a. Applicants proposing a rehabilitation project must describe in the Design Narrative of the NOFA application the scope of work being proposed, including any major systems being replaced. The development budget must also reflect construction hard costs that account for at least \$40,000 per unit. Applicants are required to provide at minimum:
    - i. A Property Needs Assessment report.
    - ii. A Schedule of Values for the proposed work.
    - iii. Rehabilitation plans that indicate the proposed improvements (i.e. the number of doors, windows, and/or fixtures to be replaced).
  - b. A conceptual energy model, prepared and signed by the project Certified Energy Auditor (CEA), is required for rehabilitation projects. For the purposes of the NOFA submittal, the energy model shall reflect the project as presented in submitted architectural drawings. The energy model may be prepared using any acceptable methodology and software approved by the California Energy Code. A unit-by-unit energy model is not required as part of the initial NOFA application (simpler energy modeling protocols may be used), but the submitted energy model shall represent the means and methods proposed to achieve the specified margin.
  - c. Applicants proposing rehabilitation projects, as defined in this NOFA, shall comply with the Architectural Design Requirements to the greatest extent possible.

## **B. Loan Committee Phase: Review of Drawings and Specifications**

Projects that received a funding award are assigned to a LACDA Project Manager who will coordinate a more comprehensive Design Compliance Review in preparation of presenting the project to the LACDA's Loan Committee.

### **DESIGN COMPLIANCE REVIEW**

Projects are expected to demonstrate compliance with all components of the Architectural Design Requirements, applicable building codes, and all applicable accessibility

requirements, including, but not limited to: the California Building Code (CBC), California Disabled Access Compliance Manual, 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA standards), and the Fair Housing Act. Compliance with these requirements shall be documented throughout the project using the Design Compliance Review Report tool provided to awardees.

Funded projects shall adhere to the provisions of CBC Chapter 11(B), and Title II of the Americans with Disability Act (2010) regarding accessibility to privately-owned housing made available for public use. The LACDA funding invokes those requirements, as applicable, including the LACDA's requirement of including a minimum of ten percent (10%) of project units with mobility features, and four percent (4%) with communications features. These units shall be distributed throughout the project consistent with 24 CFR Section 8.26.

All projects are subject to the LACDA's Design Review process. Projects that have successfully undergone the local jurisdiction's design review process, which included an opportunity for public comment, may be given special consideration only if the LACDA's requirements clearly conflict with those of a local jurisdiction.

Projects that go to the LACDA's Loan Committee while still in the early development stage may base the Design Review on Schematic Drawings or Design Development documents, draft specifications, and a conceptual Title 24 energy compliance report (for rehabilitation projects). However, these projects will require a follow-up review once construction documents and specifications are completed and the Title 24 energy compliance report is finalized (for rehabilitation projects). The Title 24 energy compliance report must be produced by a CEA.

## REQUIRED SUBMITTALS

Depending on the design stage of the project, the Design Review will be based on either the project's schematic drawings, design development drawings, or construction documents in PDF format (or full-size hard copy if requested). All drawings shall be titled and coordinated with each other, with appropriate scale indicated. Each sheet shall be numbered, dimensioned, and dated with the appropriate consulting firm logo included. All submittals must demonstrate compliance with all Architectural Design Requirements. In anticipation of the LACDA's Loan Committee meeting, the project team shall submit the following list of required drawings and documents:

1. Title Sheet that includes:
  - a. An index of all of the drawings submitted.
  - b. Project description, data, requirements, and general notes.
  - c. Vicinity map.
  - d. The names, addresses, and phone numbers of all consulting firms for the project.
  - e. Table of applicable codes and regulations.
  - f. A brief narrative of any entitlement conditions of approval, variances or easements, if any.
  - g. A summary table describing which units (by number and type) will satisfy



applicable accessibility standards, Universal Design (where applicable), and any other accessibility standards required by project funding sources.

- h. The project's energy performance according to the conceptual Title 24 energy compliance report (for rehabilitation projects only).

## 2. Site Survey.

### 3. Site Plan that includes:

- a. Scaled site plan with scale noted.
- b. Notation scale, graphic scale, and north arrow.
- c. Metes and Bounds.
- d. Setbacks and easements.
- e. Preliminary grades, elevations, and percentage slope areas showing site accessibility and surface water drainage and retention.
- f. Dimensions noting building distance from property line.
- g. All streets and curbs.
- h. All adjacent properties and approximate location of structures 20 feet from property lines. Note stories on adjacent building structures.
- i. Table and keynotes indicating hardscape finishes, noting permeable pavers or concrete if applicable.

## 4. Demolition Plan (if needed).

## 5. Foundation Plans and details.

### 6. Floor Plans for each level that include:

- a. Drawings at 1/8" or 1/4" = 1'-0", with scale noted and graphic scale provided. All required information must be legible and easily shown.
- b. Drawing title, graphic scale, and north arrow.
- c. Primary building dimensions and overall building dimensions.
- d. Room identifiers, room dimensions, and room areas (calculated as described later in this section).
- e. Storage areas labeled and with a table of storage area/volume demonstrating compliance with the Fundamental Design Requirements.
- f. Doors and windows.
- g. Kitchens, showing all kitchen cabinets and appliances. Provide dimensions and a summary of base countertop lengths.
- h. Bathrooms, showing all fixtures and accessibility clearances where necessary (including "clearance boxes").
- i. Schedule of finishes for floors, walls, ceilings, bases, and cabinets.
- j. Floor plans of any other major project amenities.

### 7. Roof Plan that includes:

- a. Drawings at 1/8" or 1/4" = 1'-0", with scale noted.
- b. Drawing title, graphic scale, and north arrow.
- c. All slopes, with a slope arrow and note pitch.

- d. All rooftop equipment, such as mechanical, evaporative coolers, photovoltaic, and solar thermal equipment.
  - e. Clearly labeled parapets or other mechanical screening devices.
8. Typical unit plans (drawn at a larger scale than floor plans).
9. Exterior Elevations that include:
- a. Elevations drawn at 1/8" or 1/4" = 1'-0", with scale noted.
  - b. Elevations of all sides and elevations that can be seen from beyond the property and those that cannot be seen, such as courtyard walls.
  - c. Drawing title and graphic scale.
  - d. Title of each elevation delineated.
  - e. Vertical elevation dimensions starting at grade, indicating each floor level, plate line, and top of roof or parapets.
  - f. Key notes for doors, windows, awnings, and all other exterior building materials and finishes, including accent trims and the like.
10. Interior elevations (kitchens and bathrooms).
11. Site Sections that include:
- a. A minimum of one cross section and one longitudinal section that best show the site and characteristics.
  - b. Approximate location of adjacent site structures and significant site characteristics 20 feet from property line. Characteristics include and are not limited to steps in grade, retaining walls, etc.
  - c. Partial site sections, if the site is complex.
12. Building Sections that include:
- a. Drawings at 1/8" or 1/4" = 1'-0", with scale noted.
  - b. A minimum of one cross section and one longitudinal section.
  - c. Cross sections through courtyards.
  - d. All mechanical equipment and required screening.
  - e. Key notes per exterior elevations requirements.
  - f. Vertical dimensions per exterior elevation requirements.
13. Landscape Plan (prepared and stamped by a landscape architect licensed in the State of California) that includes:
- a. Scaled landscape plan matching architectural site plan, with scale noted.
  - b. Graphic scale and north arrow.
  - c. All major trees, shrubs, and vine locations.
  - d. Plant material list keyed to plans, using Latin and/or common names as found on the drought-tolerant plant list being used, or the local jurisdiction's drought-tolerant plant list, if a local list is required.
  - e. Table and calculations showing that 75% of the plant selections by area are taken from the applicable drought-tolerant plant list.
  - f. Schedule of hardscape finishes, noting permeable pavers or concrete, if applicable.

14. Crime Prevention Through Environmental Design (CPTED) Documentation that includes:

- a. Exterior lighting plan at parking areas, main entry, exterior exit doors, courtyards, and any at-grade areas used by residents.
- b. Durable perimeter fence details. (Project teams may describe the perimeter fence as "steel perimeter fence to meet the LACDA's CPTED requirements.")
- c. Note on plans that building will be pre-wired for closed-circuit surveillance cameras in parking areas, main entries, exterior exit doors, and common areas not directly adjacent to regularly-occupied rooms.

15. Title 24 Energy Compliance Reporting (rehabilitation projects only) that includes:

- a. A Title 24 energy report submitted for plan check, prepared by a CEA-certified professional, including reports CF-1R or PERF-1, ECON-1, and UTIL-1, in pdf format.
- b. Energy efficiency program application information that may require coordination of energy modeling reporting.

16. Requirements for accessibility reporting, to be completed by an independent third-party California CASp:

- a. The report must indicate that the plans have been reviewed at design development phase, or later, for compliance with all applicable accessibility standards, including, but not limited to the 2010 ADA Standards, Chapter 11(B) of the CBC, Section 504 of the Rehabilitation Act (as per HUD Document Deeming Notice 29671 dated May 23, 2014), and the Fair Housing Act. The report shall also specifically address and confirm conformance with Universal Design features if those are to be included in the project per Section III B of the Architectural Design Requirements. The report shall list:
  - The owner's sources of funding;
  - The accessibility standards triggered by each source of funding;
  - The units that will meet the mobility accessible unit criteria (A minimum of 10% of units, by unit bedroom number and type, to be distributed throughout the project consistent with 24 CFR Section 8.26 with at least one mobility unit per unit type);
  - The units that will meet the communication feature accessible unit criteria (A minimum of 4% of units, by unit bedroom number and type, to be distributed throughout the project consistent with 24 CFR Section 8.26 with at least one communication feature unit per unit type);
  - The total number of parking spaces provided;
  - The total number of accessible parking spaces;
  - The mandatory measures from the NOFA Architectural Design Requirements; and
  - The mandatory measures from the LACDA's Fair Housing and Accessibility Requirements.
- b. At each review phase, the CASp consultant's report shall also include a description of the CASp's involvement in the design development and any elements that are out of compliance at the time of the review. The project developer shall include a

statement outlining how any deficiencies identified by the CASp consultant will be addressed prior to the start of construction. The LACDA reserves the right to request backup documentation from the project's CASp consultant.

- c. A determination that the project complies with all accessibility requirements, or if not, discrepancies are noted.
- d. An inspection report by an independent third party CASp will also be required at the rough framing stage of construction (before sign-off by the building inspector) and at the end of construction. The report shall list the items indicated in item "a" above and shall include a description of any element out of compliance. Development teams will be required to submit a plan to correct out of compliance elements.

17. Other Documentation:

- a. Project specifications, in searchable PDF format (and hard copy if requested).
- b. Full specifications or final specifications addressing the specific items that are required for Loan Committee Phase review. The project team shall use the Design Compliance Review Report spreadsheet to indicate where in the specifications the required performance requirements can be found. Indicate that these are either "draft" or "final" construction specifications.
- c. Detail construction cost estimate or construction bids dated and signed.

At the start of construction, the project team shall, upon request, provide the LACDA with a stamped half-size set of Construction Documents, final specifications, and final Title 24 energy compliance reports (for rehabilitation projects) from consulting firms. Construction documents must include half-size prints of architectural, structural, mechanical, electrical, plumbing, landscape plans, irrigation, grading and drainage, and civil plans.

### PROTOCOL FOR MODIFYING THE ORIGINAL DESIGN

The LACDA must be notified of material changes to the design from what was originally reviewed in the NOFA application. Changes considered material may include, but are not limited to, modifications to the unit mix, number of units, plan or elevation changes, value engineering, noncompliance with Architectural Design Requirements, Sustainable Building Methods, or Universal Design Requirements (if applicable), and changes in project material quality. All changes, whether they occur prior to or after obtaining the approval by the Loan Committee, will be subject to approval by LACDA staff and may trigger a re-review by the Loan Committee, or the re-evaluation of the project design. Should LACDA staff consider it necessary to re-evaluate the design, it will be done at the applicant's expense. The LACDA reserves the right, at its sole discretion, to reduce or rescind its funding commitment if changes are found to be unacceptable.

## **II. FUNDAMENTAL DESIGN REQUIREMENTS**

The Fundamental Design Requirements represent the minimum design elements for all funded projects. Applicants shall utilize architectural design and construction materials that will provide for low maintenance and durability.

## **A. Site Planning**

### **1. Neighborhood/Site Characteristics**

- a. Identify neighborhood characteristics: Land use, height, scale, massing of existing structures and relationship of proposed project to the characteristics found in the neighborhood.
- b. Identify and mitigate adverse impacts from adjacent use.
- c. Design landscaping and place building(s) in a manner that integrates with adjacent uses and views.

### **2. Density**

- a. Provide functional and comfortable habitable units; usable indoor common areas; and meaningful usable open spaces for residents of all ages, as appropriate.
- b. Provide visual relief by modulating the building footprint and building mass.
- c. Maintain or improve the pattern of building found within a neighborhood or community.

### **3. Surroundings**

- a. Consider the project location's traffic with respect to safety, noise, and ease of circulation when locating buildings, landscape, pedestrian walkways, and driveways.
- b. Provide clear separation between pedestrian and vehicular traffic and incorporate appropriate warning and design measures to enhance the safety of pedestrians and others moving by and through the project.

### **4. Noise Levels**

- a. Design to minimize impact from noise sources using site (such as berms or other hard features) and architectural features.

### **5. Lot Configuration and Topography**

- a. Consider size, slope, and shape of property to achieve proper placement and density of building on lot.

### **6. Neighborhood Amenities**

- a. Consider adjacencies to cultural facilities if any, such as: museums, neighborhood and/or community parks, recreation areas, theaters, and sport venues.
- b. Preserve existing assets such as mature landscaping, and near or distant views whenever possible.

### **7. Access to Public Transit**

- a. Consider logical pedestrian routes to public transportation such as bus, metro rail, and trains.
- b. Locate senior housing projects within walking distance (maximum distance of 1,500 feet) of public transportation and clearly indicate compliance on site plan.

8. Open Space for New Construction – Private and Common areas

- a. Private Area (if provided): Private outdoor space shall be accessible as required by the CBC and by Universal Design, if applicable. Hinged or sliding patio doors shall provide 32" of clear width (34" at Universal Design Units), and clear approach space shall be shown on furnished plan(s). Compliance shall be explicitly confirmed in CASp report. A private area may be a patio, deck, porch, yard, or balcony. Primary access to private open space shall not be from any bedroom, with the exception of studios and one-bedroom units.
- b. Common Area: Shall provide amenities to residents that may include seating spaces, barbeque and tables, play area, etc. and shall include the required usable area below, the amount required by local zoning code, or other funding sources, whichever is greatest. Common areas do not include circulation or required front and side-yard setbacks, unless incorporated into larger usable common areas as described above.

Number of Units	Required Space
15	30 sq. ft./unit
15-25	20 sq. ft./unit
26-50	17.5 sq. ft./unit
51+	15 sq. ft./unit

9. Fencing/Site Walls

- a. Chain-link fencing shall not be used.

**B. Building Design (Exterior)**

1. Setbacks

- a. Conform front, rear, and side setbacks to prevailing setbacks along street.
- b. Vary yard depths to provide visual interest and usable yard areas.

2. Height/Scale

- a. Relate height and scale of new construction to the prevailing height and scale of existing neighborhood buildings.
- b. Design shall reflect a human scale and shall integrate with, and enhance, the surrounding neighborhood.

3. Massing

- a. Break up the mass of the building by using a variety of shapes to express the volume of the building. For example, it may be appropriate to step back the façade of the building to allow for a lower building height at street level, and a taller building height toward the middle or rear of the property.

4. Neighborhood Compatibility

- a. Complement the existing neighborhood by taking clues from existing structures to unify the streetscape of the neighborhood. When appropriate, relate façade

design, roof shapes, size and rhythm of openings, materials and colors, and architectural style of new buildings to nearby buildings.

5. Materials and Colors

- a. Use materials that do not require extensive maintenance.
- b. Use of unconventional building materials is not discouraged, but building materials and colors shall reinforce the residential character of the building.

6. Architectural Style

- a. Determine dominant architectural style of the neighborhood (e.g. California bungalow, Mediterranean, Spanish, post WWII era tract) and incorporate contextual elements of that style to create cohesion within the neighborhood.
- b. Make a stylistic change for the better when a neighborhood has no cohesive architectural style or if the surrounding structures are of a poor quality and style.
- c. Use architectural embellishment appropriately to give the building human scale, and to provide additional design interest and detail upon closer view of the building.
- d. Provide continuous visual interest by including architectural design elements to the sides and rear of the building – in addition to the front façade.

7. Building/Street Connection

- a. Maintain building/street connection by avoiding elevating a building above a parking level at grade, which results in blank walls facing the street and adjacent properties (maximum elevation of first floor above sidewalk grade shall not exceed four (4) feet).
- b. Consider the expectation of the pedestrian walking by the building by including a sidewalk, front yard, entry steps, front door, and windows that are equated with residential neighborhoods.

8. Outdoor Recreation Area

- a. Determine residents' needs and design to accommodate intended use.
- b. Provide secure outdoor spaces for tenants and a play area for children, as applicable.
- c. Secure areas shall have good visual connection with other areas of building.
- d. Address the unique and important needs of the adolescent community, as applicable, by providing a safe and stimulating environment, but respecting their sense of autonomy and satisfying their educational and recreational needs.

9. Landscape/Hardscape

- a. Use drought tolerant and California native plants, as much as possible. A minimum of 75% of plants (by area) must be selected from a published drought-tolerant plant list, or the local jurisdiction's drought-tolerant list (if required).
- b. Design landscape with low maintenance, durability, graffiti reduction, security, noise, and view considerations in mind.
- c. Provide a stable, firm, and slip resistant ground surface for accessible routes pursuant to 11(B) 302.1. The ground surface shall be maintained accordingly pursuant to 11(B) 108.

- d. Confirm that hardscape areas (including surface parking) are either shaded during warm weather months (June through August) or have materials with initial solar reflectance of 0.33 or greater.
- e. Refer to the Section V - Sustainable Building Methods for required outdoor water conservation measures.
- f. Add pet-waste stations on property grounds at a ratio of 1 waste station for every 50 units.
- g. Consider adding a dog run or a designated area where tenants may exercise their pets.

#### 10. Trash Collection

- a. Trash collection area(s) shall be conveniently located for residents and screened from view. Trash enclosures may not be located within the front yard setback, shall be screened from street view, and shall be located away (horizontally and vertically) from operable windows and habitable spaces.
- b. Trash enclosures for dumpsters shall have a concrete pad, CMU walls, and heavy-duty metal gates. The gates at exterior trash enclosures shall be located six (6) inches off the ground to improve surveillance into the area to reduce loitering.
- c. Projects shall have an easily-accessible recycling area that serves the entire building, or shall provide a separate chute for recycling serving each floor. Trash/recycling areas shall be designed to minimize nuisance to nearby units.
- d. Projects of three (3) stories or more shall have trash and recycling chutes at each floor. Buildings with a ground-floor-only trash and recycling room shall be designed to comply with 2010 ADA Standards.

#### 11. Ease of Maintenance

- a. Avoid using materials, landscaping, fixtures, or construction types that require excessive maintenance.

#### 12. Environmentally Responsive Design

- a. Incorporate ecologically sound design principles that create quality living environments and resilient buildings by using renewable building methods and materials that are low-energy-consuming, non-toxic, site-compatible, and non-destructive to the environment, as much as financially feasible.
- b. Specify building products with recycled content.
- c. Utilize passive solar design principles that support Resilient Design<sup>1</sup> objectives, lower the building construction cost (i.e. smaller HVAC systems), and lower the cost of living for the residents of the building (i.e. lower utility bills). Take advantage of prevailing breeze to allow for natural “through ventilation.” Maximize solar access in winter and minimize solar gain during summer. Consider providing exterior glare-controlled summertime direct solar gain protection at south and west windows for all rooms less than 150 SF in area.

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<sup>1</sup> Resilient Design is the intentional design of buildings, landscapes, and communities in response to environmental vulnerabilities.



- d. Consider elements in the design that provide natural ventilation and temperature mitigated spaces for residents in the event of power outages, or other events requiring sanctuary space for safe congregation of and/or services to residents.

### 13. Value Engineering

- a. Integrate value engineering in the design process from the beginning to avoid costly designs and long-term problems from the point of view of the owner, manager, and end users. When value engineering is applied after the design is essentially complete, it typically results in stripping the project of amenities, which might otherwise have been afforded – such as reasonable finishes, landscaping, and materials of higher quality and lower maintenance cost.
- b. Value engineering in the design process must consider a cost-benefit between construction savings in the short-term and the cost of replacement, repair, and maintenance in the long-term. Demonstrate that value engineering efforts are based on a 15-year payback period and include replacement, repair, and maintenance considerations.
- c. Minimize the number of different unit types and standardize kitchens and bathrooms whenever possible.

### 14. Parking

- a. Locate parking towards the rear of the site, where possible, to minimize its impact on the street.
- b. Projects with structured decks shall screen parking with building program elements or shall propose a means to screen the parking.
- c. Projects with at-grade parking below a structured deck shall design the project to the greatest extent possible to take some attention off of the garage.
- d. Parking areas shall be safe and secure environments, consistent with CPTED standards. The design shall minimize the walking distance to the units.
- e. Use landscaping to soften the visual impact of large parking areas.
- f. Unavoidable blank walls facing streets shall have decorative artwork, display cases, or vines, and good quality, durable materials to minimize graffiti and deterioration.
- g. Parking area and overall site shall have adequate and uniformly distributed lighting.
- h. Senior housing developments shall provide for a convenient shuttle bus stop and/or pedestrian drop-off area.

### 15. Roofs

- a. Roofing shall carry a three-year subcontractor guarantee and at minimum 20-year manufacturer's warranty.
- b. Specify roof materials with the following minimum initial Solar Reflectance Index <https://www.energystar.gov/productfinder/product/certified-roof-products>:
  - Low slope roofs ( $\leq$  2:12) - 82
  - Steep slope roofs ( $>$ 2:12) - 39

## **C. Building Design (Interior)**

### **1. Entry Condition**

- a. Provide well-defined, safe entry into building from street and parking area. Utilize transitional elements: steps, landings, porches, lamps, seating, doorways, and lobby area.
- b. Provide either a front desk area or a management office near the entryway that controls security for the building, including entry and exits for guests, fire safety system monitoring, and communication with residents.
- c. Provide secure entry system (i.e. intercoms, key cards, combination pads, etc.).

### **2. Common Laundry**

- a. Common laundry area shall have one (1) washer and dryer for every 10 units. Senior developments shall have one (1) washer and dryer for every 15 units.
- b. Provide adequate natural light and ventilation.
- c. Provide visibility and access to outdoor recreation space or community room for supervision of children.
- d. Provide a utility sink and folding space.
- e. Provide a high degree of visibility from adjacent circulation spaces into the laundry room.

### **3. Recreation Room**

- a. Provide lounge space for residents to informally congregate and to build community, including secure indoor, flexible, recreational space for children (as applicable).
- b. Provide an indoor flexible multipurpose common space that can be used for community meetings and employment activities and include a kitchen area for meal preparation.
- c. Provide a high degree of visibility from adjacent circulation spaces into the recreation room.

### **4. Unit Access/Corridors**

- a. Unbroken length of corridors shall be minimized with length not exceeding 100 feet in any instance.
- b. Provide natural lighting and ventilation in corridors where corridors are adjacent to the exterior envelope
- c. Individualize unit entrances on corridors by recessing unit doorways or through other significant architectural means.
- d. Avoid the use of carpeting in corridors and hallways, keeping long-term maintenance in mind.

### **5. Building Entrance Areas**

- a. Provide a prominent, visible, entry with overhead protection, adequate space for side by side approach/egress, appropriate lighting, and design elements that reinforce project identity.
- b. Provide transitional space, such as an entry porch, to help make the transition from public space to semi-private or private space.

6. Manager's Unit and Office

- a. The manager's unit and office shall be centrally located in order to enhance security for the building residents.
- b. Consider providing additional amenities for the manager's unit to attract the best possible manager(s) for the project to assure the long-term success of the project.
- c. Provide offices for property management and social service staff.
- d. Show how early input from supportive and social service staff in office design and location was included in the design by providing a statement of certification and/or letter from supportive and social service staff.

7. Unit Mix

- a. Locate large family units at building corners to take advantage of the additional exposure to exterior wall areas.

8. Unit Sizes and Standards

- a. Unit sizes shall conform to the standards required by the California Tax Credit Allocation Committee; however, SRO units are not permitted.
- a. The minimum width of a bedroom shall be nine (9) feet.

9. Unit/Room Adjacencies

- a. Incompatible unit adjacencies, including laundry rooms or office spaces next to bedrooms, can cause problems, such as loss of privacy, noise and leakage problems, and conflicts created between neighbors. Should an incompatible unit adjacency exist, the project shall provide the minimum Sound Transmission Class ("STC") ratings as noted below:
  - i. Bedroom to adjacent bedroom – 52 STC
  - ii. Bathroom to adjacent bedroom – 56 STC
  - iii. Living room to adjacent bedroom – 54 STC
  - iv. Kitchen area to adjacent bedroom – 54 STC
  - v. Corridor, lobby, public space to adjacent bedroom – 55 STC
  - vi. Office to adjacent bedrooms – 59 STC
  - vii. Laundry room to adjacent bedroom – 65 STC
  - viii. Trash, recreation room to adjacent bedroom – 59 STC
  - ix. Bathroom to adjacent living room – 54 STC
  - x. Kitchen area to adjacent living room – 54 STC
  - xi. Corridor, lobby, public space to adjacent living room – 55 STC
  - xii. Office to adjacent living room – 59 STC
  - xiii. Laundry, trash, recreation room to adjacent living room – 59 STC
  - xiv. Similar adjacencies and those adjacencies not listed – 52 STC
- b. Laundry rooms shall have a floor assembly with proprietary sound mat to achieve a minimum 57 Impact Isolation Class ("IIC") at this condition.

10. Elevators

- a. All residential buildings with more than three (3) floors of public access (including garage) must have an elevator.

- b. Residential buildings of two (2) or more stories that house seniors or residents with greater mobility needs must have an elevator.

#### 11. Community Room

- a. A minimum of 400 sq. ft. for developments of 15 units.
- b. A minimum of 600 sq. ft. for developments of 16 units or more.
- c. A public restroom is required.

### **D. Unit Design**

#### 1. Unit Plan Room Relationships, Proportions, and Features

- a. Design circulation to avoid walking patterns that require passing through or across one space to reach another.
- b. Maximize usable space by minimizing circulation, minimizing vestibules and by using appropriate room proportions.
- c. If recycling and solid waste bins are provided, they shall be conveniently located, accessible, and adequate space shall be provided for their storage.
- d. Delineate public areas (entry, kitchen, dining, and living rooms) from private areas (bedrooms and bathrooms).
- e. Consider locating the kitchen near entry and avoid having the entrance corridor pass through kitchen.
- f. Provide distinct areas for dining and living and assure that these areas do not conflict with circulation or entries.
- g. Provide (at a minimum) a full bathroom, including lavatory, toilet, and tub/shower (or shower) in each unit.
- h. Locate bathrooms in such a way that they are not visible from entry.
- i. Consider separating the lavatory from the toilet/tub to allow use by more than one person at a time for bedrooms sharing bathrooms.

#### 2. Light and Ventilation

- a. Seek to maximize day-lighting and natural ventilation.
- b. Kitchens and bathrooms shall have windows wherever possible.
- c. Plant-on mullions are not acceptable.
- d. Consider ways to screen and physically separate ground floor windows from the sidewalk to provide privacy and security by providing screening, landscaping or by other means.
- e. ENERGY STAR exhaust fans shall be installed in bathrooms.
- f. Exterior shading or glare control is recommended for south facing windows.

#### 3. Exterior Unit Doors

- a. Insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one-year guarantee and all six (6) sides factory primed.

#### 4. Windows/Window Coverings

- a. All windows shall be equipped with a National Fenestration Rating Council (NFRC) label (for field inspection) showing the U-value and Solar Gain Coefficient.

- b. Screens shall be provided on all operable windows.
- c. Provide window treatments at all windows. Metal horizontal blinds are not permitted.

5. Kitchens

- a. Provide kitchen facilities appropriate for the household size. Kitchens shall minimally include a refrigerator, a stovetop oven (or stove/oven combination), kitchen sink, and storage cabinets.
- b. Unvented hoods shall not be used.
- c. Range hoods shall be centered over the stove.
- d. Provide kitchen counters appropriate for household size.
- e. Cabinets with doors shall be provided at all kitchen cabinets (except where cabinets are required to be removed for accessibility). No particle board or medium-density fiberboard (MDF) is permitted, except for shelving.
- f. Upper cabinets (or full-height pantries) shall be provided over all countertops installed against a full-height wall. Installation of a cabinet over the kitchen sink is optional.
- g. Provide recycling and solid waste bins built into accessible lower cabinets.

6. Appliances

- a. ENERGY STAR appliances are required (whether new or replacement).
- b. Stovetop ovens (or stove/oven combination) are required.
- c. Refrigerators are required.
- d. Consider maintenance and care when selecting appliances.
- e. Locate water heater in a place that will reduce damage in case of a leak or rupture.

7. Bath Tubs, Shower Enclosures, and Backing Materials

- a. For compliance with CBC 1134A.2, provide reinforced walls to allow for the future installation of grab bars around bathtubs and showers per 1134A.5 and 1134A.6. Grab bar backing must be a minimum 8" in height centered within the allowable height range.
- b. Mobility feature and Universal Design principle unit bathrooms bathtubs and showers must comply with CBC 11B-607.4, 11B-608.3 and 11B-609. Grab bar backing must be a minimum 8" in height to permit the installation of grab bars at all allowable height ranges. At the bathtub rear wall, additional reinforcement shall be provided for the low grab bar.
- c. Projects employing cast iron tubs with tile surrounds must install adequate structural reinforcement backing within the wall framing. Shower enclosures must also include reinforcement for the future installation of the fold-down seat.
- d. Grab bar installation materials used shall support a vertical or horizontal force of 250 lbs. applied at any point on the grab bar. Refer to CBC 11B-609.8.

8. Floor Coverings

- a. For light and medium traffic areas, vinyl or linoleum shall be at least 3/32" thick. For heavy traffic areas, it shall be at least 1/8" thick. A hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with the U.S. Department of Housing and Urban Development or

Federal Housing Administration UMD, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces.

Storage/Closet Space

- a. Provide 5 x 2 ft. minimum primary bedroom closet space per adult assuming two (2) occupants per bedroom, and 5 x 2 ft. minimum closet space per person for other bedrooms.
- b. Provide coat and linen closets in addition to bedroom closets in all two (2)-bedroom and larger units. Coat and linen storage may be accommodated within primary bedroom closet space (additional area required) in one-bedroom and studio units.

9. Furniture Layout

- a. Ensure that all rooms can be reasonably furnished for the use intended.
- b. Window and wall relationships, and room size and proportion shall be appropriate for furniture layout and circulation.
- c. The dining area shall be of sufficient size to accommodate two chairs per bedroom plus an additional two chairs with an appropriately sized table in family units that are three-bedroom units or larger.
- d. Provide furnishings for Homeless units, including at a minimum a bed, dresser, dining table with chairs, a lamp, and window coverings. Include table of furniture with matching furnished plans for these units.

10. Finish Materials

- a. Consider using materials that facilitate the performance of routine maintenance tasks by the residents.
- b. Provide low-maintenance, high-durability materials.
- c. Mill finish shall not be used for any exterior exposed aluminum products.
- d. Flat and non-flat paints used for interior surfaces shall comply with SCAQMD Rule 1113 and VOC content shall not exceed 50 g/l. All other coatings shall also comply with the current SCAQMD Rule 1113 limits of VOC content.

11. Heating and Air Conditioning

- a. Central heating and cooling systems are encouraged. Wall heaters shall not be used in new construction.
- b. Provide air conditioning throughout the building, in residential units, common areas, and offices.
- c. If the project includes ceiling fans in bedrooms, ENERGY STAR rated fans shall be used (including studio units).

12. Water Heater

- a. For units with individual water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger.

13. Communication Wiring

- a. Provide a telephone jack in all bedrooms and in one (1) common area.
- b. Provide infrastructure for broadband internet access to at least (1) location per unit or demonstrate that a broadband internet signal is provided to all areas in each

unit. Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure - including wireless infrastructure - as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (FCC's) definition in effect at the time the pre-construction estimates are generated.

14. Cable Television

- a. Provide at least one (1) jack in the living room for units with two (2) bedrooms or less.
- b. Provide a minimum of one (1) jack in at least one (1) bedroom plus one (1) jack in the living room for units of three (3) bedrooms or more.
- c. Provide Cable Television Service (CATV) for all developments with basic free service. If free basic service is not provided, a basic television connection must be provided.

**E. Crime Prevention Through Environmental Design (CPTED)**

The LACDA supports creating safe neighborhoods through the implementation of CPTED. The basic premise of CPTED is that the nature of buildings and layout of a community can attract offenders and make it easier for them to commit crimes and escape arrest. CPTED focuses on eliminating these features at the design stage to reduce crime and the fear of crime. CPTED compliance is required of all projects. Project teams shall submit required documentation as outlined above.

The five (5) overlapping concepts or strategies incorporated in CPTED are:

1. Access Control
2. Surveillance
3. Territorial Reinforcement
4. Activity Support
5. Image and Maintenance

1. Project design teams shall:

- a. Provide clear border definitions of controlled space.
- b. Clearly mark transitional zones that indicate movement from public, to semi-public, to private space.
- c. Design and locate gathering areas that provide natural surveillance.
- d. Locate indoor and outdoor activity areas at safe locations where natural surveillance and access control is possible.
- e. Design spaces to increase natural surveillance.
- f. Carefully plan a reduced number of entry points.
- g. Place signage to advise visitors of access restrictions and where they must go if they are authorized to enter your territory.
- h. Eliminate blind spots around the project site where individuals approaching the site cannot be observed.
- i. Include protected glazing for common area spaces (trash rooms, stairwells, laundry rooms, storage) that provides a clear view to all areas of those rooms from adjacent circulation areas, landings, or rooms. This is a requirement that is not

related to fire safety requirements and generally will require glazing areas that exceed the 100 sq. ft. in aperture door vision glazing that is typically specified. Where this glazing has fire rating requirements note that rated assemblies are available that provide appropriate view into these spaces.

- j. Include fencing and landscaping to direct the circulation flow of persons to a select observable pathway.
- k. Make sure that landscape plant material will not block windows and eliminate opportunities for natural surveillance.
- l. Plant low vegetation with thorns or other repelling qualities adjacent to first floor windows to prevent outsiders from approaching windows.
- m. Provide good outdoor lighting standards that illuminate pathways evenly and without shadow pockets. Ensure that exterior lighting is uniformly designed. Exterior brightness ratios shall not exceed 10:1 and shall be clearly indicated on a photometric plan (non-egress) that shows all exterior and courtyard areas of the project.
- n. Pre-wire for future surveillance cameras and include, at a minimum, all exterior entries, parking garages, and areas used for public storage. The installation of digital closed-circuit television (CCTV) cameras and recording equipment is recommended.

### **III. STANDARD ACCESSIBILITY REQUIREMENTS**

#### **A. Mandatory Accessibility Requirements**

Applicants are responsible for ensuring their project design team understands and adheres to all applicable accessibility requirements. The LACDA will require project teams to demonstrate adherence to all accessibility requirements as part of the comprehensive design review process to be completed prior to the start of construction. For more information on mandatory accessibility requirements and mandatory project certifications, see the LACDA's Fair Housing and Accessibility Requirements, which are included as a Supplemental Document to the NOFA.

#### **B. Universal Design Requirements**

The LACDA recognizes the need to create living spaces that do not disadvantage any group of residents, accommodates a wide range of resident preferences and abilities, and allow residents to age in place. Universal Design is not a code or standard, but a set of features that shall be integrated into the design of a unit to both meet the needs of residents that require accessibility features and to assist an aging population. The Universal Design Requirements incorporate TCAC Regulations Section 10325(c)(8)(B) – "Enhanced Accessibility and Visitability". For more information on Universal Design Requirements, see the LACDA's Fair Housing and Accessibility Requirements, which are included as a Supplemental Document to the NOFA.



#### **IV. SENIOR HOUSING REQUIREMENTS**

In addition to conforming to the Fundamental Design Requirements, CPTED, Universal Design Principles, and Sustainable Building Methods, applicants are required to integrate Senior Housing Requirements to respond to the specific needs of the senior population. These needs are based upon the recognition of the senior residents' changing physical conditions, the need for design clarity, and accommodation of the wide range of senior residents' mobility and visual perception capabilities. A well-designed Senior Housing development should also support the feeling of community and encourage interaction among its residents through thoughtful and creative design, enhancing the immediate neighborhood.

Senior Housing projects will be evaluated in three (3) basic categories (Mobility, Clarity, and Inclusiveness) that are outlined in the LACDA's Fair Housing and Accessibility Requirements, which are included as a Supplemental Document to the NOFA.

In addition to Mobility, Clarity, and Inclusiveness, the LACDA has added the following considerations which aim to optimize resident health and well-being with the presence of the novel Coronavirus 2019 (COVID-19). The following recommendations are based off of the Mass Design Group's Case Study for Senior Affordable Housing - The Role of Architecture in Fighting COVID-19 ([massdesigngroup.org/covidresponse](https://massdesigngroup.org/covidresponse)):

1. Consider designating entries with clear and distinct areas for staff, vendors, residents, and packages entering the building;
2. Consider creating outdoor waiting areas, as necessary;
3. Consider the use of touch-less entry doors to reduce surface transmission;
4. Consider providing clear signage for visitors of different types, indicating building health and safety protocols;
5. Consider creating buffer zones where people may be queuing in the building's public spaces (i.e. for shared restrooms, mailboxes, elevators, etc.) to allow for social distancing;
6. Consider providing space near the mail room for the cleaning of packages;
7. Consider the use of air cleansing strategies, such as high efficiency particulate air (HEPA) filters, which can be used to purify potentially contaminated air in shared areas like lobbies and elevators;
8. Consider providing access to the outdoors on each floor helps residents access nature, fresh air and sunlight without having to take the elevator or stairs;
9. Consider widening hallways and allowing for one-way circulation where possible;
10. If a hallway is less than 6' wide, consider introducing pause points so residents can have room to safely pass one another in long corridors or circulatory paths;
11. Consider bringing amenities closer to residential units, if possible;
12. Consider connecting a shared bathroom directly to a bedroom by adding a door. This strategy would allow one member of the household to self-isolate if necessary, while maintaining access to the bathroom;
13. Consider recessing entryways to provide space for others to safely pass in hallways;

14. Consider creating negative pressure in high risk rooms to ensure directional flow of air. This can be achieved by putting a fan in a window;
15. Consider providing balconies in each unit so that residents can access fresh air without having to leave their unit; and
16. Consider the use of embedded technology and communication devices in the base design of the unit. This will allow residents to not only receive contact-free notifications, it provides the platform for contact-free social connection.

## **V. SUSTAINABLE BUILDING METHODS**

The LACDA encourages sustainable building methods and efficient developments that take advantage of new renewable energy, energy efficiency, and water-saving technologies and practices. These efforts reduce a project's energy use, water use, and operational costs. All projects must incorporate the Required Sustainable Building Methods items identified below and design teams are encouraged to include additional sustainability measures, as permitted by project budgets.

Both the applicant and the project architect must certify in the initial NOFA application that the items have been included and/or that the sustainability goals have been met or exceeded. To guarantee the fulfillment of approved design and sustainability measures identified during the application scoring process, the LACDA may withhold loan funds until all issues are addressed to the reasonable satisfaction of staff.

### **Table of Required Sustainable Building Methods**

<b>REQUIRED SUSTAINABLE BUILDING METHODS</b>
Minimum Energy Efficiency: All Rehabilitation projects must be designed to meet the minimum construction requirements as defined by current TCAC Regulations.
Outdoor water conservation measures shall include: <ol style="list-style-type: none"> <li>1) Specify native or drought-tolerant plants for a minimum of 75% of landscaped area.</li> <li>2) Conventional grass/turf shall not exceed 25% of landscaped area.</li> <li>3) Group plants with similar watering needs (hydrozones).</li> <li>4) Install high efficiency irrigation system with smart irrigation controls for all landscaping.</li> </ol>
The project shall divert a minimum of 70% of non-hazardous construction and demolition debris from landfill either by recycling or by salvage efforts. Note that daily cover at landfill is neither recycling nor salvage for the purpose of this requirement.
All projects shall provide an easily-accessible recycling area for tenant use that serves the entire building.

# **SUPPLEMENTAL DOCUMENT 5**

**AFFIRMATIVE FAIR HOUSING AND  
ACCESSIBILITY REQUIREMENTS**

# **Los Angeles County Development Authority**

## **Fair Housing and Accessibility Requirements**

### **Affordable and Special Needs Multifamily Rental Properties**

In accordance with the Federal Fair Housing Act (FHA), the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act as per HUD Document Deeming Notice 29671 dated May 23, 2014 (Section 504), the California Fair Employment and Housing Act (FEHA), and the Unruh Civil Rights Act of California, it is the policy of the Los Angeles County Development Authority (LACDA) that residential rental properties that receive funding, service, or program assistance from the LACDA must adhere to all applicable federal and state laws and requirements related to Fair Housing and Accessibility.

Requirements of public funding outlined herein do not supersede the requirements of the California Building Code (CBC), including Chapter 11(A) and Chapter 11(B). It is the responsibility of each funding recipient (Borrower) to ensure that properties being renovated or constructed fully comply with applicable building codes.

For all affordable and/or special needs housing developments that receive funding, service, or program assistance through the annual Notice of Funding Availability (NOFA), it is the responsibility of the Borrower to comply with federal and state laws and regulations governing Fair Housing and accessibility for residential properties. The following Fair Housing, affirmative marketing, tenant selection, and accessibility guidelines provide the key elements of compliance that are required; however, they do not supersede the responsibility of the Borrower to comply with all applicable laws and regulations, as required by all sources of funding that are received.

### **Accessibility Requirements**

All multifamily projects that are built or renovated with financial, service, or program assistance from the LACDA will be subject to all applicable compliance requirements or standards related to Fair Housing and Accessibility. In instances where the standards differ, the project must incorporate the most rigorous or stringent standard. If two standards are comparably rigorous but conflict, the standard that is most appropriate for the project's population applies.

#### **A. Non-Federal Funding Sources**

Examples include: Affordable Housing Trust Funds, Homeless Bonus Funds, Homeless and Housing Prevention Funds, No Place Like Home Funds, and Homeless Prevention Initiative Funds.

All projects must be designed and constructed in a manner that allows access to and use by persons with disabilities in accordance with the California Fair Employment and Housing

Act (Sections 12921, 12926, 12955-12956 of the Government Code) and Title II of the ADA, as amended.

## **B. Federal Funding Sources**

Examples include: HOME Investment Partnerships Program Funds, Community Development Block Grant Funds (CDBG), Section 8 Project-Based Vouchers (PBV) and Project Based Veterans Affairs Supportive Housing (PBVASH) Vouchers, Housing Opportunities for Persons With AIDS (HOPWA), and HEARTH ACT

In addition to compliance with state requirements and Title II of the ADA, as amended, developments using U.S. Department of Housing and Urban Development (HUD) funds or rent subsidies must also comply with Section 504, the Fair Housing Act, and HUD's implementation Regulations (24 CFR Parts 8 and 100, respectively), which prohibit discrimination based on disability and establish program accessibility and physical accessibility requirements.

### **1. Applicability**

- a. For purposes of this NOFA or a Loan Agreement, newly-constructed multifamily rental housing with four or more units shall adhere to both Section 504 and Fair Housing Act design requirements. Rehabilitated multifamily housing shall adhere to Section 504 requirements and Fair Housing Act design requirements, as applicable.
- b. Section 504 design requirements are satisfied when the development is designed in compliance with the technical criteria in the Uniform Federal Accessibility Standards. Note that HUD has deemed ADA 2010 an equivalent standard (with some exceptions per Deeming Notice 29671 dated May 23, 2014) for use in projects permitted after March 15, 2013. Fair Housing Act design requirements found in HUD's Fair Housing Act Design Manual 1998 are also required. For new construction of rental projects where two or more accessibility standards apply, the Borrower is required to follow and apply both standards.

### **2. Section 504 Requirements Summary**

For the convenience of the reader, a brief summary of the requirements of Section 504 is presented here. However, to ensure full compliance, Borrowers must obtain and use a copy of the Uniform Federal Accessibility Standards (UFAS) and HUD Document Deeming Notice 29671 dated May 23, 2014, available through HUD.

## **C. Mandatory Accessibility Requirements**

All NOFA-funded projects must comply with accessibility requirements that are designed to mirror minimum requirements needed for federal Low-Income Housing Tax Credit allocations, as administered by the California Tax Credit Allocation Committee (TCAC). Note that the LACDA's requirements provide for a higher number of fully-accessible units than required by ADA 2010 or Section 504.

1. The following are mandatory requirements:

- a. Leasing documents shall include a notice of consumer rights specific to adaptability features available in each feature. These consumer rights shall also be posted within the residential dwelling units. The cost for modifying a unit identified as fully accessible shall be borne by the property manager. Adaptable unit modifications (applying to all other units) will be made by the property manager, but the cost of the modifications may be borne by the resident.
- b. A minimum of 10% of total project units shall be designed with mobility features (round up for fractional units). These units can be inclusive of Universal Design units.
- c. A minimum of 4% of total project units shall be designed with auditory and visual communications features (round up for fractional units). These units can be inclusive of Universal Design units.
- d. Designated mobility and communication feature units shall be equally distributed among different unit sizes, types, and amenities and shall be distributed throughout the project (not located in the same area, or on a single floor) with at least one mobility unit designated per unit type and one communication feature unit designated per unit type. These units shall be distributed throughout the project consistent with 24 CFR Section 8.26.
- e. Mobility and communication feature units shall be marked by an International Sign of Accessibility (ISA), of minimum 1"x1", located within the unit (below the door viewer) and mounted per CBC 11(B) 703.
- f. Townhome style units shall have a fully accessible bath and bedroom on the ground level floor. Multi-story residential dwelling units in buildings with one or more elevators shall comply with 11(B) 233.3.1.2.4 and multi-story residential dwelling units in buildings with no elevator shall comply with 11(B) 233.3.1.2.5.

**D. Mandatory Project Certifications**

1. Architect Certifications

All project architects must submit a certification that the development has been designed and constructed to be accessible to persons with disabilities, in compliance with the California Fair Employment and Housing Act, ADA 2010, Section 504 (if applicable), the Fair Housing Act requirements, and the NOFA Standard Accessibility and Universal Design Requirements.

Architect certifications shall state which units have been designated to meet the requirements of ADA 2010, Section 504, and the Fair Housing Act, including specific designation of mobility and communication feature units.

## 2. CASp Reports

To ensure full compliance with all state and federal accessibility requirements, all project teams are required to include a State of California Certified Accessibility Specialist (CASp), who is independent of the design team and who is also a registered Architect and/or Engineer.

The CASp consultant will provide a report at three (3) stages during the project life:

Loan Committee review phase – The CASp report shall indicate that plans have been reviewed and shall clearly identify if the plans are in compliance with all applicable accessibility requirements, or if there are instances of noncompliance with accessibility requirements. If evidence of noncompliance exists, the report shall clearly detail the instances of noncompliance. If the plans are not compliant with all accessibility requirements, the CASp report shall be accompanied by a letter from the Borrower describing how each non-compliant item will be resolved before the start of construction. Construction may not commence until a CASp report stating that the plans are in compliance with all applicable accessibility requirements is received and accepted by the LACDA.

Both the plans and the CASp report shall clearly identify which units will satisfy the mobility and communications requirements. The CASp report shall explicitly state which accessibility standards apply, given the funding source(s) involved in the project financing.

Construction phase - A report detailing compliance with all applicable accessibility requirements shall be provided prior to the building department's framing inspection sign-off. The CASp's physical inspection of the project must be coordinated with the LACDA's construction inspector. This construction phase report shall clearly identify that all applicable accessibility requirements are met, or the report shall clearly identify instances of noncompliance. Project teams shall provide an accompanying letter describing how the non-compliant issues will be remedied, along with a projected timeframe for completion. The report shall clearly identify which units satisfy the mobility and communications requirements above. The CASp report shall explicitly state which accessibility standards apply, given the funding source(s) involved in the project financing.

Close of construction - The final report from the CASp at the close of construction shall be submitted before a notice of completion is recorded. The report shall identify that the constructed project meets all applicable accessibility requirements, or shall identify the steps needed for accessibility compliance to be achieved. Follow-up CASp reports are required until all outstanding issues of noncompliance have been addressed. The LACDA reserves the right to request additional documentation if deemed necessary.

CASp reports at all stages shall include the information identified in the NOFA Architectural Design Requirements "Loan Committee Phase – Review of Drawings and Specifications" and shall clearly identify compliance with all applicable accessibility requirements or detail the instances of noncompliance.

## **E. Universal Design**

All senior housing projects must incorporate Universal Design Principles. The LACDA recognizes the need to create living spaces that do not disadvantage any group of residents, accommodates a wide range of resident preferences and abilities, and allow residents to age in place. Universal Design is not a code or standard, but a set of features that should be integrated into the design of a unit to both meet the needs of residents that require accessibility features and to assist an aging population. The Universal Design Requirements incorporate TCAC Regulations Section 10325(c)(9)(B) and include:

1. For Senior Housing Projects, Universal Design Standards are required for 100% of all project units.
2. Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible route. To achieve the 34" opening, ensure sufficient space is provided for the rear door swing.
3. Interior doors with lever hardware and 42" minimum width hallways.
4. Fully accessible bathrooms complying with ADA 2010 and CBC 11(B). In addition, a 30" x 48" clearance parallel to and centered on the bathroom lavatory vanity allowing for a parallel approach.
5. Accessible kitchens (meeting the requirements of ADA 2010). A 30" x 48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and kitchen sink).
6. Accessible master bedroom size shall be at least 120 square feet (excluding the closet), shall accommodate a queen size bed, shall provide 36" of clearance around three (3) sides of the bed, and shall provide required accessible clearances, free of all furnishings, at bedroom and closet doors. The master bedroom closet shall be on an accessible path.
7. Units that include communication features for audio or visually impaired residents, alarms and doorbells shall extend into all habitable rooms and bathrooms and shall fully comply with all requirements of UFAS/ADA 2010 (mandatory application in 4% communication feature units). If this feature is design-build, it should be clearly identified in the plans at the time of design review.
8. Closets and balconies shall be located on an accessible route.
9. Universal Design principle units shall be distributed throughout the project consistent with 24 CFR Section 8.26.



10. Universal Design principle units shall have an ISA symbol of minimum 1" x 1", located within the unit (below the door viewer) and mounted per 11(B) 703.
11. Senior housing projects are required to integrate these Universal Design Requirements for all project units and include the installation of grab bars and the installation of the tub seat at the accessible bathroom. Non-senior Universal Design units do not require installation of tub seat and shower spray unit – these features can be designed to be adaptable.
12. Universal Design Principle requirements shall be clearly listed and delineated on the plans.
13. Applicant must obtain confirmation from a CASp that the above Universal Design requirements have been met.

## **F. Senior Housing Requirements**

In addition to conforming to Universal Design Principles, projects that are restricted to seniors (at a minimum aged 55 and older) are required to integrate Senior Housing Requirements to respond to the specific needs of the senior population. These needs are based upon the recognition of the senior residents' changing physical conditions, the need for design clarity, and accommodation of the wide range of senior residents' mobility and visual perception capabilities. A well-designed Senior Housing development should also support the feeling of community and encourage interaction among its residents through thoughtful and creative design, enhancing the immediate neighborhood.

Senior Housing projects will be evaluated in three (3) basic categories: Mobility, Clarity and Inclusiveness, outlined below.

Mobility: Physical mobility and dexterity goals and strategies.

1. Easy access from parking areas and project entries to apartments, common areas and outdoor areas shall be provided (all common area spaces shall be on an accessible path of travel).
2. An accessible drop off area near the main entry or incorporated into below-grade parking for steep sites shall be provided.
3. Main entrance should have ADA-assisted doors to accommodate for resident's declining physical strength (ADA Automatic Door).
4. Corridors at least 60" wide to accommodate wheelchairs, assisted walking, and two (2) residents walking side-by-side with mechanical assistance are recommended.
5. Elimination of excessive changes in grades at building exteriors and within common areas and the use of sloped sidewalks (1:20 maximum slope) is recommended; where ramps are required, the maximum slope shall be 1:12 per ADA 2010. Within units, no changes in elevation are allowed, and all units shall be a single story.

6. Lever hardware on doors shall be used. Other hardware for cabinets, drawers, and closets shall be easy to use with minimal physical effort and limited finger dexterity.
7. Reasonable access/distance from units to parking, common rooms, trash rooms and laundry shall be provided (location and configuration of parking shall fully comply with CBC 11(B)/ADA 2010).
8. At least one (1) ADA-compliant elevator shall be provided.
9. Pursuant to the Unruh Act, the development shall also provide that:
  - i. Entryways, walkways, and hallways in the common areas of the development, and doorways and paths of access to and within the housing units, shall be as wide as required by current laws applicable to new multifamily housing construction for provision of access to persons using a standard-width wheelchair;
  - ii. Walkways and hallways in the common areas of the development shall be equipped with standard height railings or grab bars to assist persons who have difficulty with walking;
  - iii. Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps; and
  - iv. Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents.

Clarity: Perceptual and orientation goals and strategies.

1. Organization of the architectural elements for a senior development should be clear and straightforward, without confusing angles and complicated access paths.
2. Within a structure and within the individual unit, floor plan layouts that are easy to understand and remember.
3. The incorporation of visual cues such as skylights, windows, widened corridors, enlarged corridor intersections, recessed entries (to common rooms and offices), sculptural light fixtures, and colors to serve as spatial points of reference and landmarks for resident navigation.
4. Comprehensible signage design that is large enough to read, that offers appropriate visual contrast between text and foreground, and that is appropriately located.
5. Clear lobby directories.
6. Coupling signage text with recognizable icons that cater to varying levels of literacy and cognitive ability (i.e. line drawing or icon of a computer next to the computer lab sign in the directory).

7. The use of wayfinding strategies that incorporate visual access between parts of the building to allow opportunities to monitor interior or exterior landmarks.
8. The use of wayfinding strategies that incorporate a degree of architectural differentiation between spaces through the use of distinct shapes and forms.
9. The use of memory boxes or other means to personalize resident unit entry doors is encouraged.
10. Signage design that is large enough to read and is appropriately located.
11. Optimal combinations of direct, indirect, and natural lighting design shall be considered throughout the project, particularly in stairways, hallways, units, and entryways.
12. Pursuant to the Unruh Act, the development shall also provide that walkways and hallways in the common areas shall have lighting conditions which are of sufficient brightness to assist persons who have difficulty seeing.

Inclusiveness: Goals and strategies promoting resident interaction and accessibility for all.

1. A project that is accessible to residents of all physical abilities, especially in common areas, such as: parking, outdoor common areas, community rooms, laundry, and trash areas.
2. A project that can accommodate residents with varying vision, hearing and dexterity levels.
3. A project that accommodates the frail and those with physical limitations.
4. A project that provides a variety of unit sizes to accommodate single residents, couples, or residents with caretakers.
5. The incorporation of informal meeting places in the main circulation corridors, intersections of hallways and stairways, in addition to common spaces and outdoor spaces.
6. Use of doors with glass panels to maintain a visual connection at laundry rooms and common rooms to the corridors and to the building exterior.
7. Use of internal window openings along interior corridors to provide visual connections to the exterior or courtyard.
8. Common areas that can accommodate a variety of uses and users.
9. Additional design features that promote a sense of community among residents.

10. Pursuant to the Unruh Act, the development shall be designed to encourage social contact by providing at least one common room and at least some common open space.

## **AFFIRMATIVE MARKETING**

All multi-family projects that are funded through the NOFA are required to submit for approval, the attached **Affirmative Fair Housing Marketing Plan** (AFHM) that details the marketing strategy designed to provide information and to attract eligible persons or families in the housing market area to the available units without regard to race, color, national origin, sex, gender identity, religion, marital status, familial status, disability, sexual orientation, ancestry, genetic information, source of income, or any other basis prohibited by law. The plan shall describe initial advertising, site signage, website and social media promotion, recorded messages, community outreach, and all other marketing and communication activities which will inform potential renters or buyers of the availability of the units.

The plan shall address both the initial lease-up phase and the ongoing marketing of vacancies, waiting lists, and accessible units throughout the term of affordability.

## **LOS ANGELES COUNTY HOUSING RESOURCE CENTER**

All rental projects must register the properties on the Los Angeles County Housing Resource Center (LAC-HRC) at [www.housing.lacounty.gov](http://www.housing.lacounty.gov). This includes projects that include exclusively Special Needs or homeless units and/or projects and units that are leased through a Coordinated Entry System of any type.

Property listings must include detailed information on accessibility features of the building and all units, as well as information on the number and bedroom size of any fully accessible units. These fully accessible units must be marketed as a unique unit type (i.e. one BR vs. one BR accessible).

Project listings must be posted and approved prior to the first time that any rental applications are available.

Projects that offer rental opportunities available to the general public must also create a special PDF marketing flyer that describes the accessibility features and explains how a person can apply for a unit. This flyer is posted on a page for "New Leasing Opportunities for Affordable and Accessible Housing."

The advertising of accessible rental units on the LAC-HRC helps the project comply with new regulations for Information and Communication Technology (ICT) that require the use of accessible websites that comply with requirements of Section 508 of the Rehabilitation Act of 1973, while the LAC-HRC call center is experienced in helping people who call using transfer services.

The requirement to register a property on the LAC-HRC is an ongoing obligation that requires the property listing to be updated as unit types become available, leased, or have a status change of any type.

## **PRE-LEASE UP MEETINGS**

Rental projects are required to have a preliminary lease up meeting within 30 days of construction start and a second pre-lease up meeting between 60 and 90 days from the date that residency applications will be accepted.

The pre-lease up meetings (or conference calls) should include the Borrower's project manager, the management company, and the service provider agency. Topics to be discussed include:

- Approval of all website postings advertising the project.
- Construction sign requirements.
- Developing the Affirmative Marketing Plan
- Use of a Coordinated Entry System
- Special outreach efforts
- Interest lines and phone messages
- TTY/TDD or Relay Services
- Special marketing of accessible units
- Confirmation of no local preferences
- Registering properties on the L.A. County Housing Resource Center website

## **SIGNAGE AND GRAPHICS**

All construction or leasing signs on projects funded by LACDA funds must include the International Symbol of Accessibility and the Equal Housing Opportunity Logo.

<http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf11/hudgraphics/fheologo>

There must be a prominent display of the HUD Fair Housing poster at the leasing office and project site from the beginning of construction through occupancy (24 CFR 110.10). This poster must be at a minimum 11 inches by 14 inches (24 CFR 110.25). This poster is available at the local HUD office or available for download at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opportunity/marking](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/marking)

All posted rental information or interest phone numbers must include a TTY/TDD phone number or a Relay Service phone number.

An Equal Housing Opportunity logo, statement, or slogan must be included on all written outreach tools (i.e. signs, advertisements, brochures, direct mail solicitations, press releases, etc.).

Any rental office associated with the project must display the HUD Fair Housing Poster, which is available at the local HUD office or available for download at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opportunity/marking](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/marking)

Rental offices must also display a Notice of Right to Reasonable Accommodation.

## **LANGUAGE**

All marketing materials should also include a Spanish language contact. As approved in the Affirmative Marketing Plan, there may be other languages used for project marketing. It is important to register the project on the LAC-HRC, because the call center and website are bi-lingual, and the website includes a Google translator feature.

## **OTHER WEBSITES**

Postings of project leasing information on the Borrower, architect, or management company's website must include the following items:

- International Symbol of Accessibility
- Equal Housing Opportunity logo
- TTY, TTD or Relay Service phone number

## **ARCHITECTURAL RENDERINGS**

Although not required, Borrowers and architects are encouraged to include representations of diverse populations of people (race, ethnicity, age, gender, family size) and at least one person with a disability (as identified with a wheelchair, cane, walker, or service animal) in renderings of the property that will be used for marketing or posting on the LAC-HRC.

## **AFFIRMATIVE FAIR HOUSING MARKETING PLAN REVIEW**

The Borrower must review its AFHM Plan at least once every five (5) years throughout the life of the loan and to update it as needed in order to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (see 24 CFR Part 200, Subpart M). This shall be done more frequently if local conditions or project demographics significantly change. The LACDA and/or HUD may monitor the implementation of this AFHM Plan at any time and may also request modification in its format and/or content, when deemed necessary.

## **SENIOR HOUSING EXEMPTION**

At least one of the following conditions must be met for a "senior-only" project to be considered exempt from the Fair Housing Act's prohibition of discrimination based on familial status:

- HUD has determined that the dwelling is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or
- The project will be occupied solely by persons who are 62 years of age or older, or
- The project houses or will house at least one person who is 55 years of age or older in at least 80 percent of the occupied units and adheres to a policy that demonstrates intent to house persons who are 55 years of age or older.

## **INITIAL TENANT SELECTION**

### **APPROVAL OF TENANT SELECTION PLAN**

The requirements, procedures, and methods used for processing tenant applications will typically depend on a combination of factors, including the management company's standard procedures, as well as other requirements imposed by a housing authority, Coordinated Entry System(s), service needs, vulnerability assessments, criminal background requirements, Mental Health Services Act (MHSA) requirements, and/or any other overlying qualification protocols needed.

Projects must submit a Tenant Selection Plan and Property Management Plan in addition to the Affirmative Marketing Plan. The LACDA must approve the application package prior to the initiation of leasing.

The Tenant Selection Plan must also distinguish between the initial lease-up process for the building's first occupants, and how waiting lists and tenant qualification will be handled on an ongoing basis.

The Initial Tenant Selection Plan must address the following items:

### **APPLICATIONS**

Explain if there will be pre-application form or a full application made available. Include the application and, if applicable, the pre-application form. The forms must include a section in which the applicant can request an accessible unit, and designate if they are requesting a mobility or a communication feature unit. Explain how the applications will be logged and processed.

The application package and annual recertification cover pages must include a statement that reasonable accommodations and special forms of communication are available upon request.

The application phase shall be a specific period of time during which prospective tenants can obtain and return applications or pre-applications. The process must include a mechanism for prospective tenants to request reasonable accommodations related to the physical process of obtaining, completing, or submitting an application.

## **LOTTERIES**

Projects that have units available to the public are strongly encouraged to hold lotteries for initial tenant selection. The Initial Tenant Selection Plan should explain if the lottery will be a drawing or an electronic lottery, if the community will be invited, and/or if the lottery will be broadcast via a web-based platform.

The lottery process should include a mechanism to identify people who have requested accessible units and to assign those people to the appropriate accessible unit before filling the unit with another tenant who has not requested an accessible unit.

Lotteries are appropriate for units that do not require a Coordinated Entry System or other assessment based on level-of-need, or service history with the Los Angeles County Departments of Health Services (DHS) or Mental Health (DMH).

## **LOCAL PREFERENCES**

No local preferences will be allowed. An exception to this prohibition may be made for projects in jurisdictions with their own Continuum of Care, at the LACDA's sole discretion.

## **LEASE**

A sample lease that includes the following, must be submitted:

- Notification that tenants in accessible units who did not request or do not require the accessible features agree to be relocated to another unit, if necessary to offer the accessible unit to a person or persons with disabilities.
- Notification that the tenant may request reasonable modifications by the landlord or management company in order to accommodate a disability.
- A rider explaining the rights of tenants under the Violence Against Women Act for projects with HUD funding.

## **COORDINATED ENTRY SYSTEMS**

Sponsors of projects that include Permanent Supportive Housing (PSH) units may elect, or be required, to use a Coordinated Entry System (CES) or Coordinated Assessment process to prioritize tenants for selection. For purposes of this document, CES shall also refer to Coordinated Assessment processes.

## **GENERAL DEFINITION AND APPLICATION IN LOS ANGELES COUNTY**

A CES is an organized process that provides for the assessment of homeless individuals for the purposes of placing them into PSH projects with the goal of housing the most vulnerable people first. A CES also includes data and referral systems that capture information about available PSH units so that the prioritized individual can be referred to the next available and appropriate PSH unit.



The CES can be used for chronically homeless and homeless individuals, families, Transition Age Youth, and homeless veterans.

CES data management is part of the Homeless Management Information System (HMIS) required by HUD and administered by the Los Angeles Homeless Services Authority (LAHSA) for the Los Angeles Continuum of Care (CoC).

The CES that was jointly created by United Way of Greater Los Angeles and CSH Los Angeles is supported by LAHSA. However, there are four CoCs in Los Angeles County, with varying levels of data coordination. The four CoCs are Los Angeles, Pasadena, Glendale, and Long Beach.

## **REQUIRED USAGE**

Because not all projects funded by the LACDA serve homeless populations, the use of a CES is not required for all NOFA-funded projects. Projects providing PSH units are strongly encouraged to consider CES, and in some cases will be required to utilize CES as a condition of certain funding sources, such as HUD CoC funding. The project's marketing and leasing plan shall identify if CES will be utilized and designate the units that will receive CES referrals. Use of CES for NOFA-funded projects must be approved as part of the marketing and lease-up plan.

## **CES AND HOME FUNDS**

CES may be used for HOME-funded units that provide Permanent Supportive Housing.

## **CES and the Los Angeles County Housing Resource Center**

Projects that use CES, for all or a portion of units, must still list the project on the Restricted-Access portion of the LAC-HRC, and include detailed information in the listing about how caseworkers and agency users can direct a prospective tenant to be assessed for inclusion in a CES pipeline.

## **ONGOING MANAGEMENT AND COMPLIANCE**

### **TENANT RECORDS**

The Property Owner or designee shall maintain records of all prospective tenant applicants, including their race, ethnicity and gender, reasons for denial of application, placement on a waiting list, and other relevant information. Owners shall also maintain records of tenant requests for accessible units and the related occupancy, denial, or wait list determination for such requests.

Unless there is an approved CES process in place, the Property Owner or designee shall also provide for the selection of applicants from a written waiting list in the chronological

order of their application, insofar as is practicable, and provide prompt written notification to any rejected applicants of the grounds for any rejection.

The Property Owner or designee must certify that it has affirmatively furthered fair housing at the time of lease up. Review of this affirmative marketing effort for rental projects will be conducted in conjunction with the Annual Owner's Tenant Certification process.

## **ACCESSIBLE UNITS**

The Property Owner must maintain as-built drawings at all times that show the location of fully accessible Universal Design Principle units, as well as all mobility and communication feature units.

Borrowers, Sponsors, and/or Owners of affordable multi-family projects that have received funding from the LACDA in the past are strongly encouraged to develop and maintain an inventory of accessible units in the funded properties. This inventory should list any Section 504 or ADA certifications that have been established, along with other information related to adaptability and Universal Design. The inventory should be a project compliance evaluation that also describes accessibility components of parking, common areas, playgrounds, mailboxes, signage, path-of-travel, and any other part of the project related to the provision of tenant services or amenities.

## **EMERGENCY PREPAREDNESS**

Property Management Plans that are submitted for LACDA approval must include a section that addresses emergency preparedness for tenants for all buildings over 15 units.

## **ALERT LA COUNTY**

Management Plans for LACDA funded properties are encouraged to provide all tenants with information about **Alert LA County** (<https://www.lacounty.gov/emergency/alert-la/>), which is a free mass notification system for Los Angeles County residents and businesses. The Sheriff's Department uses Alert LA County to contact you if there is an emergency or disaster in your community. The system sends shelter-in-place instructions, evacuation, and other emergency messages.

## Affirmative Fair Housing Marketing Plan Summary (RENTAL)

<b>1a. Applicant or Owner's Name, Address (including city, state &amp; zip code), telephone &amp; email address</b>	<b>1b. Project Name, Location (including city, and zip code) (Use both NOFA application name and completed name, if known)</b>	
<b>1c. Type of Housing/ Number of Units</b>  Check all that apply <input type="checkbox"/> Senior Age 62+ <input type="checkbox"/> Non Senior/Family <input type="checkbox"/> PSH - individuals <input type="checkbox"/> PSH - families <input type="checkbox"/> PSH – TAY <input type="checkbox"/> PSH - Veterans <input type="checkbox"/> Special Needs <input type="checkbox"/> HUD 811 PRA  <input type="checkbox"/> Other  Total Units w/o managers unit: _____ Total Units incl. managers unit: _____  Additional Description:	<b>1d. Rental Range</b> From \$ To \$ Check all that apply <input type="checkbox"/> LIHTC <input type="checkbox"/> HOME Rents <input type="checkbox"/> PBV - LACDA <input type="checkbox"/> PBV - HACLA <input type="checkbox"/> PB VASH - LACDA <input type="checkbox"/> PB VASH HACLA <input type="checkbox"/> Shelter Plus Care <input type="checkbox"/> Continuum of Care <input type="checkbox"/> DMH FHFP <input type="checkbox"/> MHSA <input type="checkbox"/> DHS FHSP	<b>1e. Tenant Selection</b> Check all that apply  <input type="checkbox"/> CES # of units: _____  <input type="checkbox"/> DHS # of units: _____  <input type="checkbox"/> Lottery # of units: _____  <input type="checkbox"/> Other  Verify that there is no local preference in the tenant selection plan.  <input type="checkbox"/> Verified, no local preference
<b>1f. Approximate Starting Dates (mm/dd/yyyy)</b> Advertising _____ Date of Initial Occupancy _____ <small>Advertising to begin at least 90 days prior to initial occupancy. Notification of intent to begin marketing shall be submitted to the Los Angeles County Development Authority no later than 90 days prior to initiation of marketing.</small>	<b>1g. Housing/Expanded Housing Market Area</b>	
<b>1i. Managing Agent's Name &amp; Address (including city, state &amp; zip code), telephone &amp; email address</b>	<b>1h. Census Tract</b>	
<b>1j. Entity Responsible for Marketing (check all that apply)</b> <input type="checkbox"/> Owner <input type="checkbox"/> Agent <input type="checkbox"/> Other (specify) _____ Name, Address (including city, state & zip code), telephone & email address		

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1k. Contact for Affirmative Fair Housing Marketing Plan (Name, Address (including city, state & zip code), telephone & email address)

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2. Wait List (for existing projects)

To add to waiting list \_\_\_\_\_ (which currently has \_\_\_\_\_ individuals) \_\_\_\_\_

To reopen closed waiting list \_\_\_\_\_ (which currently has \_\_\_\_\_ individuals) \_\_\_\_\_

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3a. Demographics of Project and Marketing Area (Complete Worksheet 1)

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3b. Targeted Marketing Activity

Based on your completed Worksheet 1, indicate which demographic group(s) in the housing market area is/are least likely to apply for the housing without special outreach efforts.

- ☐ White    ☐ Hispanic or Latino    ☐ American Indian or Alaskan Native    ☐ Asian  
☐ Black or African American    ☐ Native Hawaiian or Other Pacific Islander    ☐ Families with Children  
☐ Persons with Disabilities    ☐ Other ethnic group, religion, etc. (specify): \_\_\_\_\_

4a. Proposed Marketing Activities: Community Contacts

Complete and submit Worksheet 2 to describe your use of community contacts to market the project to those least likely to apply.

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4b. Proposed Marketing Activities: Methods of Advertising

Complete and submit Worksheet 3 to describe your proposed methods of advertising that will be used to market to those least likely to apply. Attach samples of advertisements, radio and television scripts, internet advertisements and websites, brochures, etc.

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5a. Fair Housing Poster

The Fair Housing Poster must be prominently displayed in all offices in which rental activity takes place (24 CFR 200.620(e)). Check below all locations where the Poster will be displayed.

☐ Rental Office    ☐ Model Unit    ☐ Other (specify): \_\_\_\_\_

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5b. Affirmative Fair Housing Marketing Plan (AFHM Plan)

The AFHM Plan must be available for public inspection at the rental office (24 CFR 200.625). Check below all locations where the AFHM Plan will be made available. Check all that apply:

☐ Rental Office    ☐ Model Unit    ☐ Other (specify): \_\_\_\_\_

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5c. Project Site Sign

All Project Site Signs should include the Equal Housing Opportunity logo, slogan, or statement (24 CFR 200.620(f)). Check below all locations where the Project Site Sign will be displayed. Check all that apply:

☐ Rental Office    ☐ Model Unit    ☐ Entrance to Project    ☐ Other (specify): \_\_\_\_\_

The size of the Project Site sign is/ will be: \_\_\_\_\_ x \_\_\_\_\_

The Equal Housing Opportunity logo or slogan or statement is/will be: \_\_\_\_\_ x \_\_\_\_\_

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6. Evaluation of Marketing Activities

Explain the evaluation process you will use to determine whether your marketing activities have been successful in attracting the group(s) least likely to apply, how often you will make this determination, and how you will make decisions about future marketing based on the evaluation process.

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7a. Marketing Staff

What staff positions are/will be responsible for affirmative marketing?

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7b. Staff Training and Assessment: AFHM Plan

- (1) Has staff been trained on the AFHM Plan? ☐ Yes    ☐ No
- (2) Is there ongoing training on AFHM Plan and Fair Housing Act issues in general? ☐ Yes    ☐ No
- (3) Is yes, who provides it?
- (4) Do you periodically assess staff skills, including their understanding of the AFHM Plan and their responsibilities to use it? ☐ Yes    ☐ No
- (5) If yes, how and how often?
-

- 
8. Coordinated Entry: Describe in detail the proposed use of a Coordinated Entry System.
9. Publicly Available Units: Describe the number and type of units that will be available to the general public.
10. Language and Translation: Describe what marketing materials, websites, or social media will be translated into other languages. Describe staff capacity to assist persons with Limited English Proficiency. Describe any translation services that will be available.
11. Assisting People With Communications Disabilities: Describe methods that will be employed to assist people who have vision, hearing, or speech disabilities who need assistance learning about the property and how to apply for occupancy. Will there be a TTY or Relay Service Number on all marketing materials?
12. Affirmative Marketing of Accessible Units: Describe measures that will be employed to notify prospective tenants of the availability of accessible units.
13. Additional Considerations Is there anything else you would like to tell us about your AFHM Plan in order to ensure that your program is marketed to those lease likely to apply for the units and/or to be housed in them? Please attach additional sheets, as needed.

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#### 14. Review and Update

By signing this form, the applicant/respondent agrees to review its AFHM Plan at least once every 5 years throughout the life of the loan and to update it as needed in order to ensure continued compliance with HUD's Affirmative Fair Housing Marketing Regulations (see 24 CFR Part 200, Subpart M). This shall be done more frequently if local conditions or project demographics significantly change. The Los Angeles County Development Authority and/or HUD may monitor the implementation of this AFHM Plan at any time, and may also request modification in its format and/or content, when deemed necessary.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

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Signature of person submitting this Plan & Date of Submission (mm/dd/yyyy)

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Name (type or print)

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Title & Name of Company

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## Instructions

The Affirmative Fair Housing Marketing Plan requires that each applicant subject to these requirements carry out an affirmative program to attract prospective tenants of all minority and non-minority groups in the housing market area regardless of race, color, national origin, sex, religion, marital and familial status, handicap (disability), sexual orientation, ancestry or source of income. These groups include White, members of minority groups, i.e., Black, American Indian/Alaskan Native, Hispanic or Latino, Asian, Native Hawaiian or Other Pacific Islander, person with disabilities, families with children, or persons with different religious affiliations in the housing market area who may be subject to housing discrimination on the basis of race, color, national origin, sex, religion, marital and familial status, handicap (disability), sexual orientation, ancestry or source of income. The applicant shall describe on this form the activities it proposes to carry out during advance marketing, where applicable, and the initial rent-up period. The affirmative marketing program also should ensure that any group(s) of persons normally **not** likely to apply for the housing without special outreach efforts know about the housing, feel welcome to apply and have the opportunity to rent.

## NOTES:

### Part 1 – Applicant and Project Identification.

A housing market area is the area from which a multifamily housing project owner/agent may reasonably expect to draw a substantial number of its tenants. If a housing market area is not demographically diverse in terms of race, color, national origin, sex, religion, marital and familial status, handicap (disability), sexual orientation, ancestry or source of income, an expanded housing market area may be used. This is a larger geographic area that may provide additional diversity. Indicate the housing or expanded housing market area in which the housing is/will be located, e.g., “City of \_\_\_\_\_” for housing market area, or “City of \_\_\_\_\_” and “County of Los Angeles” for expanded housing market area.

For item 1f, specify approximate starting date of marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy. The applicant may obtain Census Tract location information, item 1h, from local planning agencies, public libraries and other sources of census data. Item 1i is to be completed only if a Managing Agent is implementing the plan.

### Part 2 – Wait List

In the case of existing project, specify how many individuals were or are on the waiting list at the time the advertising began or will begin.

### Part 3 – Demographics and Marketing Area

“Least likely to apply” means that there is an identifiable presence of a specific demographic group in the housing market area, but members of that group are not likely to apply for the housing without targeted outreach, including marketing materials in other languages for limited English proficient individuals, and alternative formats for persons with disabilities.



Reasons for not applying can include, but are not limited to insufficient information about housing opportunities, language barriers, or transportation impediments.

**Part 14** – The applicant’s authorized agent signs and dates the Plan. By signing the Plan, the applicant assumes full responsibility for its implementation. The Los Angeles County Development Authority may at any time monitor the implementation of the Plan and request modification in its format or content, where the Los Angeles County Development Authority deems necessary.

**Notice of Intent to Begin Marketing.** No later than 90 days prior to the initiation of rental marketing activities, the applicant with an approved Plan shall submit written notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance requirements.

## Affirmative Fair Housing Marketing Certification

**Project Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

I, the undersigned, on behalf of \_\_\_\_\_ hereby certify under penalty of perjury that the marketing efforts for the above-named project is or have been conducted in complete adherence to the Affirmative Marketing Plan dated \_\_\_\_\_ as previously accepted and approved by the Los Angeles County Development Authority.

\_\_\_\_\_  
Signature of Property Owner or Designee

(Name)\_\_\_\_\_

(Title)\_\_\_\_\_

(Date)\_\_\_\_\_

**Worksheet 1: Determining Demographic Groups Least Likely to Apply for Housing Opportunities**

(See AFHM Plan Summary, Block 3b)

In the respective columns below indicate the percentage of each demographic group for the project (if occupied), waiting list (for existing projects), census tract, housing market area, and expanded housing market area (if the latter is needed to create a more diverse housing market area in terms of race, color, national origin, religion, sex, disability, or familial status).

Wherever possible, statistics should be obtained from a local planning office, Community Development Block Grant Consolidated Plan, or another official source such as the U.S. Census Bureau (please see <http://factfinder.census.gov>. Under Decennial Census, click "Get Data". Choose SF3, then detailed tables).

If there is a significant under-representation of any demographic group in the project and/or on its waiting list relative to the surrounding housing market area, then those groups(s) that are under-represented will be considered "least likely to apply" without targeted outreach and marketing, and will be so identified in Block 3b of the AFHM Plan Summary. Maps showing both the Housing Market Area and Expanded Housing Market Area should also be attached.

Demographic Characteristics	Project %	Waiting List %	Census Tract %	Housing Market Area %	Expanded Housing Market Area% (if used)
White					
American Indian or Alaskan Native					
Asian					
Black or African American					
Native Hawaiian or Other Pacific Islander					
Hispanic or Latino					
Persons with Disabilities					
Families with Children					
Other					

Worksheet 2: Proposed Marketing Activities – Community Contacts (See AFHM Plan Summary, Block 4a)

For each targeted marketing population designated as least likely to apply in Block 3b, identify at least one community contact organization you will use to facilitate outreach to the group. This could be a social service agency, religious body, advocacy group, community center, etc. State the names of contact persons, their addresses and phone numbers, their previous experience working with the target population, the approximate date contact was/will be initiated, and the specific role they will play in assisting with the affirmative fair housing marketing program.

Targeted Population(s)	Community Contact:
1	Name, address, telephone & email:
	Experience with target pop:
	Date contact initiated: Specific marketing role:
	Name, address, telephone & email:
	Experience with target pop:
	Date contact initiated: Specific marketing role:
2	Name, address, telephone & email:
	Experience with target pop:
	Date contact initiated: Specific marketing role:

**Worksheet 3: Proposed Marketing Activities – Methods of Advertising (See AFHM Plan Summary, Block 4b)**

Complete the following table by identifying your targeted marketing population(s), as indicated in Block 3b, as well as the methods of advertising that will be used to market to that population. For each targeted population, state the means of advertising that you will use, as applicable to that group. In each block, in addition to specifying the media that will be used (e.g., name of newspaper, television station, website, location of bulletin board, etc.), state any language(s) in which the material will be provided, identify any alternative format(s) to be used (e.g., Braille, large print, etc.), and specify the logo(s) (as well as size) that will appear on the various materials. Attach additional pages, if necessary.

Methods of Advertising ↓	Targeted Population:	Targeted Population:	Persons with Disabilities
Los Angeles County Housing Resource Center website	Public Access?	Restricted Access?	Accessible Unit PDF?
Housing.LACity.Org			
Coordinated Entry System	Provide details on use of CES, if applicable. Specify which Continuums of Care are involved and any efforts to market outside of Los Angeles CoC, if any.		
Newspaper			
Radio Stations			
TV Stations			
Other Electronic Media (websites , social media, etc.) (include DMH website if applicable)			
Bulletin Boards			
Brochures, Notices, Flyers			
Other (specify)			

# **SUPPLEMENTAL DOCUMENT 6**

## **LACDA UNDERWRITING GUIDELINES**

**FINANCING UNDERWRITING STANDARDS AND COST GUIDELINES**  
**AFFORDABLE HOUSING TRUST (AHTF) FUNDS AND NO PLACE LIKE HOME (NPLH) FUNDS**  
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**OCTOBER 2020**

**PROPOSED PROJECTS MUST DEMONSTRATE FINANCIAL FEASIBILITY FOR BOTH DEVELOPMENT AND OPERATIONS**

Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
Accessibility	<p>A minimum of 10% of the units in the project (by unit type) must be accessible to persons with mobility impairments.</p> <p>A minimum of 4% of the units in the project (by unit type) must be accessible to persons with sensory impairments.</p>		<p>CASp review required at various stages, as identified in the Affirmative Fair Housing and Accessibility Requirements. Units must be distributed throughout the project. Project shall adhere to the accessibility requirements that are most restrictive according to project funding sources.</p> <p>For additional information, please refer to the Design Guidelines within the NOFA.</p>
Accounting / Audit Fees by Accountant – Operating	\$7,500 to \$12,000		<p>Audits are required for all properties. Therefore, all operating budgets must include an audit cost line item.</p> <p>Line item includes both the annual audit and tax returns.</p> <p>Audit must be a single-asset audit. For mixed-use projects, the financials for non-residential uses (i.e. commercial, retail, etc.) must be separate from that of the residential uses.</p>
Accounting / Audit Fees by Accountant – Capitalized (included in the Development Budget)	\$15,000 to \$25,000		<p>Line item includes the cost certification, organization accounting and other accounting needs (i.e., interim financial and tax return preparation).</p> <p>Audit must be a single-asset audit. For mixed-use projects, the financials for non-residential uses (i.e. commercial, retail, etc.) must be separate from that of the residential uses.</p>

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
Acquisition	<p>Acquisition costs included in the Development Budget shall not exceed Fair Market Value (FMV) of the land, as established by an “as-is” appraisal. Such an appraisal must establish the market value of the property using the condition existing as of the date of the Appraisal establishing the value. The appraisal must be dated within six (6) months of the date of the purchase contract (i.e. Purchase and Sale Agreement or Disposition and Development Agreement).</p> <p>At the discretion of the LACDA, acquisition costs may exceed FMV of the land if the difference is attributable to demolition performed by the Seller.</p>		<p>Note re Acquisition Loans - Allowable Acquisition Loan Costs:</p> <ul style="list-style-type: none"> <li>Interest and other loan costs (e.g., origination costs, etc.) are allowable as project costs as long as the lender is a commercial lender with a recognized loan program and standard documentation of the loan, acceptable to the LACDA, is provided.</li> <li>If the lender is not a known commercial lender with a recognized loan program (including entities related to the project borrower) OR if standard documentation of the loan acceptable to the LACDA is not provided, the costs associated with the “loan” to the project borrower are not an allowable expense in the project budget (regardless of whether LACDA or another financier is reimbursing the interest expense).</li> </ul>
Affordability	<p>Homeless and Special Needs units must be at or below 30% AMI unless applicant provides justification (acceptable to the LACDA) for 35% AMI.</p> <p>Preservation units assisted by the LACDA must be affordable to households earning no greater than 50% AMI. If the unit is also assisted with PBVs, upon unit turnover, affordability level changes from 50% AMI to 30% AMI.</p> <p>Under no circumstances can NPLH units exceed 30% AMI.</p>	<p>Units must be restricted to households earning at or below 30% of AMI.</p> <p>For NPLH projects, at least one household member must qualify as a member of the NPLH Target Population (as defined in the NOFA).</p> <p>Occupancy, income, and rent limit requirements shall apply throughout the period of affordability.</p> <p><i>If a loss of operating subsidy event were to occur (owner not at fault), the NPLH Transition Reserve is required to be fully depleted prior to the implementation of an increase in the maximum allowable rent, as outlined in detail in the NPLH Regulatory Agreement.</i></p>	<p>The term of affordability for all funding sources is 55 to 57 years:</p> <ul style="list-style-type: none"> <li>55-year term used for permanent loans.</li> <li>57-year term used for predevelopment and construction loans.</li> </ul> <p>Loan term mirrors the affordability term.</p> <p>Rent levels shall be expressed in 5% increments as a percentage of AMI.</p> <p>Income determination shall be made in accordance with the requirements in 25 CCR Section 6914 and 25 CCR Section 6916. Income levels shall be expressed in 5% increments as a percentage of AMI.</p> <p>If other funding sources are subsidizing the LACDA-assisted units, then the most restrictive rent limit applies.</p> <p>If the LACDA-assisted units are subject to a Land Use Covenant or Density Bonus Agreement, then the most restrictive rent limit applies.</p>



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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes														
Appraisal	\$15,000		\$5,000 for acquisition \$10,000 for construction loan appraisal  The acquisition appraisal must be dated within six months of the date of the purchase contract.														
Architect's Fee	Architect's Fees for design and construction supervision are allowable in the amounts set forth below: <table><tr><td>Total Hard Costs</td><td>Maximum Fee</td></tr><tr><td>0 - \$250K</td><td>10%</td></tr><tr><td>&gt; \$250K - \$500K</td><td>9%</td></tr><tr><td>&gt; \$500K - \$1M</td><td>8%</td></tr><tr><td>&gt; \$1M – \$2.5M</td><td>7%</td></tr><tr><td>&gt; \$2.5M - \$5M</td><td>6%</td></tr><tr><td>&gt; \$5M</td><td>5%</td></tr></table>	Total Hard Costs	Maximum Fee	0 - \$250K	10%	> \$250K - \$500K	9%	> \$500K - \$1M	8%	> \$1M – \$2.5M	7%	> \$2.5M - \$5M	6%	> \$5M	5%		This is intended as a guideline only.
Total Hard Costs	Maximum Fee																
0 - \$250K	10%																
> \$250K - \$500K	9%																
> \$500K - \$1M	8%																
> \$1M – \$2.5M	7%																
> \$2.5M - \$5M	6%																
> \$5M	5%																
Attorney - Developer	\$50,000 - \$100,000		Developer's Bond attorney costs are included here. Cost varies depending on complexity of deal and Tax Opinion Letter requirements.  Developer's attorney reviews acquisition, loan, tax credit investment / syndication and partnership documents, bond documents and other business issues.														
Attorney - Syndication	\$35,000 - \$45,000		Syndication Attorney represents the tax credit investor. Should be included in gross equity number.														
Attorney – Bank (Lender Legal Paid by Applicant)	\$30,000 - \$50,000																
Attorney(s) - Bond deals	\$40,000 - \$60,000		This applies to total bond legal cost.														

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Bond deals cost of issuance	Min: \$300,000 Max: 4-6% of bond amt.		Projects in unincorporated LA County must use the LACDA (on behalf of the County of Los Angeles) as the conduit bond issuer. If a project is located within an incorporated city that (a) is providing financing for the project, and (b) is a conduit issuer of mortgage revenue bonds, that city (or Housing Authority) may be the conduit issuer. If the project is located in an incorporated city that does not have authority to issue bonds, then the LACDA must be the conduit issuer.
Bond Fees assessed by LACDA	<u>Application</u> - \$5,000 (paid per CDLAC application) <u>Issuer</u> - .25 X total bond amount (one time, paid at bond closing) <u>Annual</u> - Greater of either 12.5 basis points (0.125%) of the outstanding bond amount or \$6,000 (annual fee over the 55 year compliance period)		Although the presented guidelines are based on transactions where LACDA has acted as the conduit issuer, other issuers will assess comparable fees.  Please note, these fees are subject to change without notice. Certain fees are estimated.  A trustee is required on all LACDA issued Tax-Exempt Bond transactions.
Cash Flow	Project must demonstrate a positive cash flow for 15 years.  Projects with Operating Subsidy must demonstrate positive cash flow for 20 years.  Projects with a Capitalized Operating Subsidy (COS) must demonstrate positive cash flow throughout the term of the subsidy (typically 17 to 20 years).		Income from residential portion cannot be used to support the negative cash flow of commercial portion, and vice versa.
Construction Manager Fee	\$6,500 per month		CM is consultant who is not part of GC's contract. If CM is part of Developer's staff, then this cost is part of Developer Fee and is not charged as a separate budget item.

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
Debt Coverage Ratio	<p>Year 1: <u>1.15 to 1.20</u>, unless a senior lender has a higher requirement.</p> <p>Remaining Years: 1.15 <u>minimum</u> DCR, unless a senior lender has a higher requirement.</p>		
Developer Fee – Capitalized	<p>For 9% TCAC projects: Maximum developer fee that may be included in the project cost is \$2,000,000.</p> <p>For 4% TCAC/CDLAC projects, the maximum developer fee is \$2,500,000.</p> <p>Maximum developer fee to sponsor via capitalized financing sources and/or cash flow is \$2,500,000. A larger developer fee may be included in a project's eligible basis, <u>but any fee in excess of \$2,500,000 must be contributed as equity to the project or paid out of the Borrower's share of residual receipts.</u></p>		<p>Common pay-in schedule:</p> <ul style="list-style-type: none"> <li>• 25% at Construction Start</li> <li>• 25% during Construction</li> <li>• 50% after 6 months of stabilized occupancy</li> </ul> <p>For new construction or rehabilitation only projects, the maximum developer fee that may be included in eligible basis is 15% of the project's unadjusted eligible basis. (TCAC Regulations - Section 1027(c) (2)(A) and (B))</p>
Developer Fee – Deferral	<p>Developer Fee can be deferred for the purpose of paying other development costs.</p> <p>10 years is the maximum deferral period, unless a longer period is allowed in the borrower's partnership agreement. If that is the case, LACDA staff will review to determine the maximum pay-off period that will be granted to the project. Once the pay-off period is expired, residual receipt payments will take priority over any remaining deferred fee.</p> <p>No interest allowed on the deferred fee.</p>		Deferral of the Developer Fee is not required.

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Development Consultant  (Outside Staff)	\$75,000 to \$100,000		Disallow cost of in-house person.  Consultants who are not part of developer's in-house staff (including but not limited to financial consultant, project management, entitlement consultant, brokerage fee for site acquisition); otherwise, consultant fees must be paid from the project's Developer Fee.  The sum of the Development Consultant Fee and the Developer Fee must be less than the Developer Fee cap per CTCAC.
Disbursement Agents / Service	Cost of service is approximately 1-2% of Construction contract.		
Furniture Cost	\$3,000/furnished unit (Special Needs)  \$1,500/unit common area furnishings		Applicant must include costs to furnish all Homeless units in the proposed development budget. At minimum, budget should provide for a bed, dresser, dining table with chairs, and a lamp.  For NPLH projects DMH requires a coffee table and a sofa in addition to the furnishings noted above. If a project combines AHTF and NPLH funds, the NPLH furniture requirements shall be used for all Special Needs units.  HOME funds cannot be used to purchase furniture (items that are not fixed to the building).
General Conditions + Overhead + Profit	Maximum of 14%		These combined line items should not exceed more than 14% of cost of construction (site work & structures).  At project completion, the overhead and profit percentage must reflect the percentage agreed to / allowed at underwriting.
Green Building Certification (LEED, Green Point Rated, etc.)	Up to \$75,000		Line item includes sustainability/energy consultant, program registration, and program compliance costs.

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
Hard Cost Contingency	<u>New Construction</u> 5% - 10% of Hard Costs (40+ units) 10% of Hard Costs (< 40 units)  <u>Rehab</u> 10% to 15% of Hard Costs		Amount of contingency allowed depends on size of project and whether site has environmental remediation issues.
Hard Cost for Rehabilitation	Minimum rehabilitation cost must be the greater of 20% of the adjusted basis or \$40,000 / unit.		Rehabilitation work should include replacement of at least two major building systems (e.g. roof, plumbing, HVAC, elec., etc.), but will be based on the Capital Needs Assessment.
Hard Costs	Davis Bacon or Prevailing Wage: \$260-\$325/SF (est.)  Non-Davis Bacon or Prevailing Wage: \$200-\$240/SF (est.)		
Holding Cost	\$5,000 - \$10,000/year for vacant building or vacant land.		Includes security costs, fencing, landscaping, maintenance, and insurance costs incurred prior to the start of construction.
Income and Expense Escalators	Income: 2.5% annually  Expenses: 3.5% annually		
Insurance	See NOFA for detailed insurance requirements.		
Interest Rate – LACDA Loans	3% Simple, 10% Default	0% Simple, 10% Default	

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
LACDA Fees – Asset Management & Compliance Monitoring Payment	LACDA will assess an annual asset management and compliance monitoring payment of \$7,150.	<u>Not Applicable</u>	For non-NPLH projects, the asset management & compliance monitoring payment is an annual above-the-line expense that is paid in connection with monitoring and certification activities. This payment cannot be waived, and shall be paid to the LACDA throughout the term of the loan.
LACDA Fees – Changes to Standard Loan Documents	Actual cost of consultant cost with an upfront, non-refundable deposit of \$2,500.		If modifications to the loan documents are requested, a non-refundable deposit of \$2,500 will be due upon written notification to the LACDA of the requested modification. The applicant will be charged all costs incurred by the LACDA. If the costs exceed \$2,500, the balance owed must be paid prior to the execution of the loan agreement.
LACDA Fees – Loan Reservation Deposit	A nonrefundable reservation deposit of \$7,150 is required to reserve (applied to first year's asset management and compliance monitoring payment).	<u>Not Applicable</u>	For non-NPLH projects, this fee is to be paid within 60 days of award notification date.
LACDA Fees – Material Change	Actual administrative costs with an upfront, non-refundable deposit of \$2,500.		When a material change is made after application evaluation, a fee of \$2,500 is due and payable to the LACDA upon submittal of the material change notification to the LACDA. This covers the costs related to the LACDA's review of the proposed project. If costs exceed \$2,500, the balance owed must be paid upon written notification from the LACDA. Any remaining funds will be used for administration costs for the continued review and administration of the proposed project.
Leasing Expense (Deficit)	Equates to the negative cash flow during the lease-up period.		The lease-up time period assumption should be noted in the "Development Budget Notes & Assumptions" page included in the application.
Leasing Fee for Third Party Entity	Fee paid to property management company and/or service provider, for direct costs for tenant screening.		This is NOT a bonus or incentive fee.  If this expense is included in the project's budget, the fee must be described in the "Development Budget Notes & Assumptions" page included in the application.
Manager's Unit	At least one manager's unit is required for all projects.		The on-site manager must be full-time and reside at the project.

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
Marketing	<p>Special Needs Projects: \$20,000</p> <p>Mixed Population Projects: \$20,000</p>		<p>Expenses such as advertising and promotion incurred during the Lease-Up period in order to attract tenants, including the Groundbreaking and Grand Opening ceremonies (within reason).</p> <p>Developer or Property Manager must register the vacant units (at initial lease-up and in the future) on the LA County Housing Resource Center website (<a href="http://housing.lacounty.gov">housing.lacounty.gov</a>) to assist housing locators in identifying vacant units.</p> <p>The Marketing expense should reflect the cost savings from utilizing the LA County Housing Resource Center.</p>
Minimum Operating Expenses (per unit per year)	<p>Minimum Operating Expenses are derived from LACDA's Housing Portfolio:</p> <p>Type - Family</p> <ul style="list-style-type: none"> <li>- &lt; 24 Units: \$6,600</li> <li>- 25-50 Units: \$6,200</li> <li>- &gt; 50 Units: \$6,200</li> </ul> <p>Type – Senior</p> <ul style="list-style-type: none"> <li>- &lt; 24 Units: \$6,600</li> <li>- 25-50 Units: \$5,100</li> <li>- &gt; 50 Units: \$5,400</li> </ul> <p>Type – Special Needs</p> <ul style="list-style-type: none"> <li>- &lt; 24 Units: \$6,600</li> <li>- 25-50 Units: \$7,700</li> <li>- &gt; 50 Units: \$6,300</li> </ul>		<p>The LACDA will accept operating expenses below these minimums if justified with audited financial statements for the last two years for two comparable properties currently owned by the developer. The properties should be similar in size, type, tenant population, and location to the proposed project.</p> <p>Note that LACDA's operating expenses do <u>not</u> include the following expense:</p> <ul style="list-style-type: none"> <li>- replacement/operating reserves</li> <li>- debt service</li> <li>- supportive services staffing</li> <li>- partnership management fees</li> <li>- deferred developer fee</li> </ul> <p>Portfolio expenses do include property taxes.</p> <p>-</p>

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Item	County General Funds Guidelines	No Place Like Home Guidelines	Notes
NPLH Flexible Operating Reserve (FOR)	<u>Not Applicable</u>	LACDA's NPLH Loan will not require residual receipt payments. In lieu of residual receipts payment, a Flexible Operating Reserve exclusively reserved for the NPLH units will be funded on an annual basis from cash flow (after payment of debt service, partnership management fees, and deferred developer fee, if any).	All NPLH projects shall have a NPLH Flexible Operating Reserve (FOR) and the FOR will remain an asset of the project for the full term of the NPLH Loan. The FOR is calculated based on a percentage of net cash flow sized to the hypothetical pro-rata residual receipts distribution that would be due to the LACDA, if residual receipts were being disbursed for the NPLH Loan. The FOR must be paid prior to disbursement of residual receipts.  The FOR will be used to provide a reserve for shortfalls in project operations, supportive services, furnishings, or replacement reserves associated with the NPLH Assisted Units.
Offsite Improvements	Unincorporated County: \$10,000 per unit  Other Jurisdictions: \$5,000 per unit		
Operating Reserves – Capitalized	3 months of operating expenses and 3 months of debt service.  Up to 6 months of operating expenses and 6 months of debt service if a senior lender or investor has a higher requirement. (No more than 6 months will be allowed by the LACDA even if the senior lender or investor's requirement is greater than 6 months.)	Additional Guideline: NPLH funds may not be used to capitalize the reserve.	The reserve should remain with the project throughout the term of the LACDA loan. Written approval from the LACDA is required prior to any withdrawal from the Operating Reserves.
Partnership Management Fee	\$15,000 annually max before residual receipts. This fee may escalate at 3.5% per year.  LACDA will <u>not</u> permit accruals of unpaid fee.		Paid from net cash flow. Fee should only be taken during the Tax Credit Compliance period (generally years 1-15).  Payments above \$15,000 must either be made out of cash flow after residual receipts or from Borrower's portion of residual receipts.



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Permit Processing Fees	Approximately \$8,000 per unit, but varies by jurisdiction.		<p>Do NOT include School Fees in this line item.</p> <p>Projects in unincorporated areas may have certain entitlement and building and safety fees waived by the Departments of Regional Planning and Public Works, respectively. Note that the fee waivers will trigger California State prevailing wage requirements.</p>
Predevelopment Loans	<p>Interest rate 3-6%</p> <p>Origination Fee: 1-2%</p> <p>Legal Fees: \$10,000</p>		<p>Allowable Predevelopment Loan Costs:</p> <ul style="list-style-type: none"> <li>• Interest and other loan costs (e.g., origination costs, etc.) are allowable as project costs as long as the lender is a commercial lender with a recognized loan program and standard documentation of the loan, acceptable to the LACDA, is provided.</li> <li>• If the lender is not a known commercial lender with a recognized loan program (including entities related to the project borrower) OR if standard documentation of the loan acceptable to the LACDA is not provide, the costs associated with the “loan” to the project borrower are not an allowable expense in the project budget (regardless of whether LACDA or another financier is reimbursing the interest expense).</li> <li>• If the lender is not a known commercial lender with a recognized loan program (including entities related to the project borrower), the costs associated with the “loan” to the project borrower are not an allowable expense in the project budget (regardless of whether LACDA or another financier is reimbursing the interest expense).</li> </ul>

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Prevailing Wages: Federal (Davis Bacon) and State	<p>Premium: approximately 20% more than non-Prevailing Wage, as applied to the overall construction cost (including labor and materials).</p> <p>Applicant/Developer shall be responsible for complying with actual applicable wage scale.</p>		<p>Payment of prevailing wages is assumed. Applicant may submit a legal opinion that states the project is exempt from payment of prevailing wages.</p> <p>Possible triggers, non-exhaustive:</p> <p><u>Davis Bacon (Federal):</u></p> <ul style="list-style-type: none"> <li>Using HOME funds for <u>12 or more units</u> will trigger DB. (Section 92.354 Labor section of HOME Regulations)</li> <li>Using PBVs or PBVASH of 9 units or more.</li> </ul> <p><u>State:</u></p> <ul style="list-style-type: none"> <li>Utilization of fee waivers</li> <li>Inclusion of State funding sources</li> </ul>
Property Management Fees	Maximum of \$60 per unit per month to the contracted Property Management Company		Item should not include On-site Manager (full-time or part-time) salary or unit rent.
Property Tax Expense – Capitalized and Operating Period	1.25% of acquisition cost per year; any tax refunds must go into reserves.		<p>The Development Budget should include the estimated amount of Property Taxes paid from acquisition to lease-up.</p> <p>Property taxes should be greatly reduced after receiving welfare exemption and should be reflected in cash flow.</p>
Relocation (Permanent)	Budget should reflect the estimates from the relocation plan.		Staff will review the relocation plan and budget to ensure the amounts are justified.

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Replacement Reserve	<p>Greater of:</p> <p>Multi-Family &amp; Special Needs:  Min \$300/u/yr - new  Min \$350/u/yr – rehab</p> <p>Seniors &amp; SRO  Min \$250/u/yr - new  Min \$300/u/yr - rehab</p> <p>OR</p> <p>Investor or senior lender’s requirement</p>	\$500 per unit per year	<p>Borrower shall not deposit any more or less in the replacement reserve than what is allowed based on the greater of the LACDA requirement or the senior lender.</p> <p>NPLH funds may not be used to capitalize the reserve.</p> <p>For mixed-use projects, the replacement reserve for non-residential uses (i.e. commercial, retail, etc.) must be funded with revenue from the non-residential uses.</p>
Replacement Reserve, Renewable Energy Equipment			Replacement reserves to replace renewable energy systems. NPLH funds may not be used to capitalize the reserve.
Residual Receipts	<p>50-50 split:</p> <ul style="list-style-type: none"> <li>• 50% to Borrower</li> <li>• 50% to all other public lenders <ul style="list-style-type: none"> <li>○ Excluding LACDA NPLH Program residual receipt payments.</li> </ul> </li> </ul>	There will be no residual receipt payments to the LACDA for the NPLH Loan.	
School Fees	<p>Include the impact fee assessed by the local school district.</p> <p>Current LAUSD Impact Fee, eff. 7/20/2020:</p> <p>Residential – \$4.08 / SF  Commercial – \$0.66 / SF</p>		Some school districts waive or assess lower fees for 100% affordable and/or senior developments. Fees will vary between different school districts. School fees must be paid to Building and Safety prior to pulling building permit.
Section 3 (of the HCD Act of 1968)	Required when Federal funds or LACDA rental assistance are being utilized by the project.		

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Soft Cost contingency	2% - 4% of soft cost		
Subordination	<p>The LACDA will generally subordinate its loan, with right to cure, to construction loans and other public lenders with larger loan amounts.</p> <p>The aggregate sum of all LACDA's funding to the project will be used to determine the LACDA's lien priority.</p>	<p>The NPLH Regulatory Agreement, which outlines the NPLH affordability requirements and regulatory restrictions including the NPLH Transition Reserve requirements and the with NPLH Target Population requirements, will not be subordinated.</p> <p>The LACDA will require the other lenders (senior and junior) to execute a NPLH Subordination Agreement to subordinate to the NPLH Regulatory Agreement.</p>	
Supportive Services	<p>SN Units: The project cannot pay for personnel with the exception of an after-school coordinator. See the Supportive Services spreadsheet for eligible costs the project can include to be paid prior to residual receipts.</p> <p>General Affordable Units: The project can pay for certain personnel and non-personnel costs.</p> <p>Direct cost of services <u>cannot</u> be included as an operating expense.</p>		<p>The project will receive funding from Measure H for all SN units to cover personnel costs and majority of non-personnel costs. See Supportive Services spreadsheet for further information on allowed personnel and non-personnel costs.</p> <p>Staffing budget shall reflect:</p> <ul style="list-style-type: none"> <li>• 1:20 staff-to-client ratio for single Special Needs adult households</li> <li>• 1:15 staff-to-client ratio for Special Needs families with children in the household</li> <li>• 1:40 to 1:75 staff-to-client ratio for general affordable units.</li> </ul> <p>LACDA will <u>not</u> permit a capitalized supportive services reserve.</p>

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Target Populations	<p>Homeless and/or special needs households.</p> <p>Low-income units assisted by the LACDA (Preservation projects) must be affordable to households earning up to 50% AMI.</p>	<p>Households with at least one person who qualifies as a member of one of the target populations identified in Welfare and Institutions Code Section 5600.3:</p> <p>(a) Adults or older adults with a Serious Mental Disorder, or</p> <p>(b) Seriously Emotionally Disturbed Children or Adolescents, who are:</p> <p>Homeless, Chronically Homeless, or At-Risk of Chronic Homelessness</p> <p>Occupancy, income, and rent limit requirements shall apply for the fifty-five (55) or fifty-seven (57) period of affordability.</p>	<p>Borrower is expected to construct the project and restrict the tenant incomes as presented in the Unit Mix and Rents section of the application.</p> <p>Borrowers are required to use a Coordinated Entry System to fill homeless and special needs units.</p> <p>As applicable, lease-up and marketing should be coordinated with the Los Angeles County Department of Health Services and Department of Mental Health.</p>
Tax Credit – Price/Factor	Projects must use reasonable assumptions for tax credit pricing.		<p>A tax credit investor's letter of interest (LOI) is not required at NOFA submittal, but if available, applicants shall use this pricing (or pricing that is substantially similar) in project financing assumptions.</p> <p>If a Letter of Interest (LOI) is not available, applicants shall use pricing that is reasonably related to the Los Angeles County market. The LACDA will not approve a loan based on assumptions that are unreasonable or inconsistent with industry standards. The LOI must be submitted prior to the loan committee stage.</p>

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Total Development Cost	<p>Per unit residential cost should not exceed \$500,000 without justification accepted by the LACDA.</p> <p>Maximum Funding Per Project:</p> <ul style="list-style-type: none"> <li>AHTF Projects outside of the City of Los Angeles: \$5 million</li> <li>AHTF Projects in the City of Los Angeles: \$2 million</li> <li>Preservation Projects: \$1 million</li> </ul>	<p>Per unit residential cost should not exceed \$500,000 without justification accepted by the LACDA.</p> <p>Maximum Funding Per Project:</p> <ul style="list-style-type: none"> <li>NPLH Projects outside of the City of Los Angeles: \$5 million</li> <li>NPLH Projects in the City of Los Angeles: \$3 million</li> </ul>	

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<p>Transition Reserves</p>	<p><u>OPTIONAL</u></p> <p>If required by a senior lender or investor, LACDA will permit one-year of transition reserve for the non-NPLH units subsidized with project based rental assistance.</p> <p>Borrower shall use the same calculation used for the NPLH Transition Reserve (see No Place Like Home Guidelines column) to determine the non-NPLH Transition Reserve. (less the manager's unit).</p> <p>May be capitalized or funded through cash flow (may not use the flexible operating reserve for non-NPLH units).</p>	<p><u>REQUIRED – “NPLH Transition Reserve”</u></p> <p>One-year of Transition Reserve (TR) <u>required</u> for the NPLH Units subsidized with project-based rental assistance (may be partially or fully capitalized or funded through cash flow).</p> <p>The sizing of the NPLH TR will be based on:</p> <ul style="list-style-type: none"> <li>(i) Base Rent equal to 30% of the monthly Federal Supplemental Security Income for a one-person household (per each project unit regardless of number of bedrooms) calculated based on the project year after the rental assistance contract expires (typically at Year 16 or Year 21). For the purpose of this NPLH TR calculation, SSI can increase by 2% per year and will be reduced by the 10% vacancy rate.</li> <li>(ii) Year 16 or Year 21 Operating Expense <u>[excluding</u> any annual reserve deposits and including debt services (if any) and property taxes]. This can increase by 3.5% per year.</li> <li>(iii) Difference between (i) and (ii) above will equal the projected Operating Shortfall at the end of the project-based rental assistance contract date.</li> <li>(iv) For the NPLH TR divide the Operating Shortfall by the number of units receiving a rental subsidy then multiply that number by the total number of NPLH units.</li> <li>(v) If capitalized, the amount in (iv) may apply a net present value with a discount rate of 1.5% to be achieved by Year 10.</li> </ul>	<p><u>NPLH Note:</u></p> <p>Projects shall have a NPLH Transition Reserve in the event that any project-based rental assistance is not renewed, or other operating subsidy is exhausted, and the project cannot secure sufficient other rental or operating subsidies to continue without immediately raising rents on the NPLH assisted units. The NPLH Transition Reserve shall be in an amount sufficient to prevent rent increases for residents of NPLH assisted units for a period of one year. NPLH funds may not be used to capitalize the reserve.</p> <p>The NPLH TR must be either capitalized or fully funded with cash flow by project year 10.</p> <p>The NPLH Transition Reserve can be held by the senior lender or in a third-party bank account established by the Borrower. The LACDA will require the Borrower to execute a form of Deposit Account Control Agreement to grant the LACDA a security interest in the NPLH Transition Reserve. The NPLH Transition Reserve shall remain with the project regardless of sale or transfer of ownership (throughout the 55- or 57-year affordability term). In no event shall any NPLH reserves be used to fund limited partner exit costs, repay any indebtedness of the owner and shall only be used for the support of the financial feasibility of the NPLH assisted units if approved operating subsidies for the NPLH assisted units are lost through no actions or negligence of the owner or related parties.</p> <p><u>Other Notes:</u></p> <p>The non-NPLH Transition Reserve should remain with the project throughout the term of the LACDA loan. Written approval from the LACDA is required prior to any withdrawal from the Transition Reserve.</p> <p>The NPLH and non-NPLH Transition Reserve (if applicable) shall be held in separate accounts.</p>
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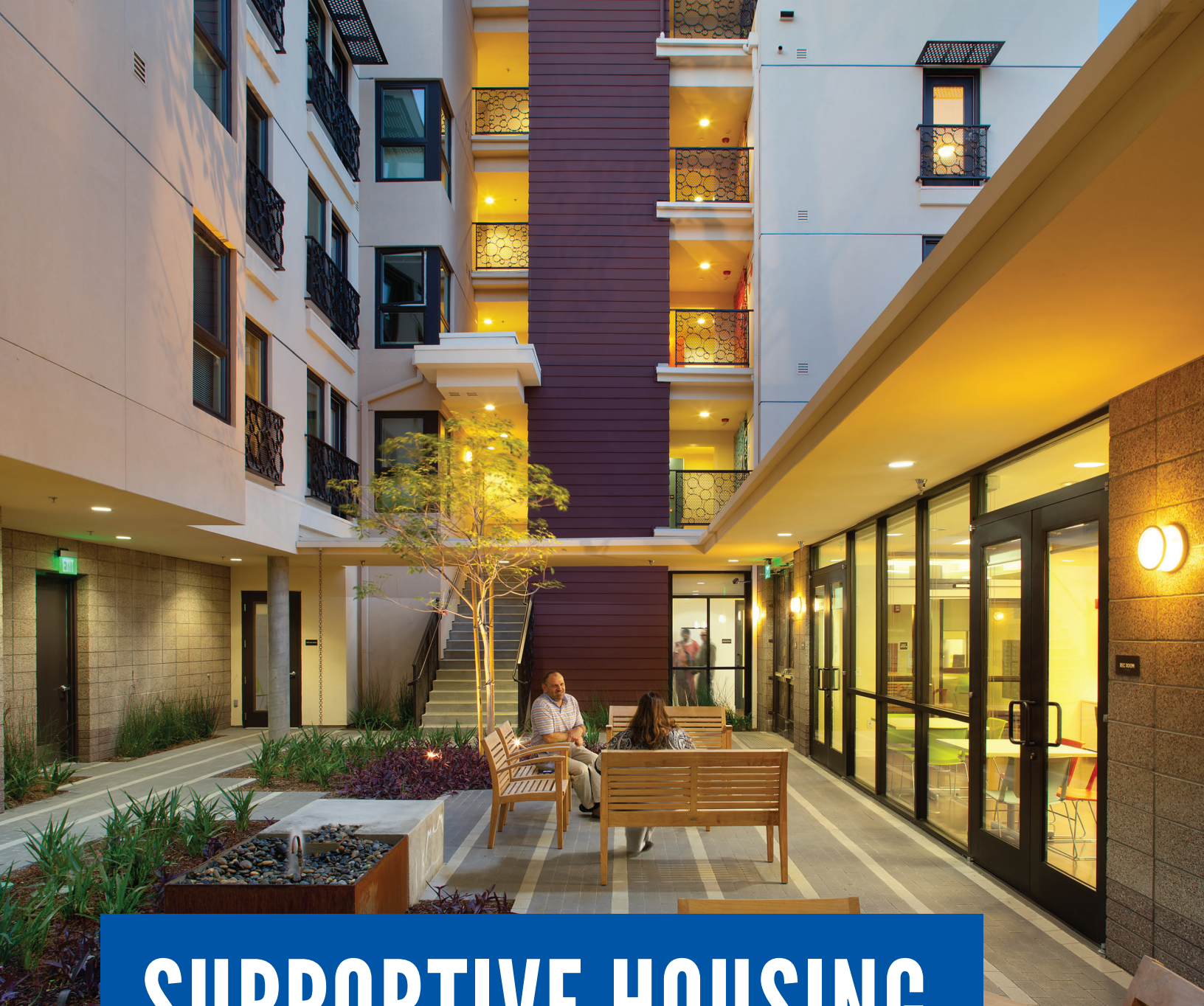
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		(vi) If funded through cash flow the TR can be funded from the flexible operating reserve for Years 1 through10 and a 1.5% discount rate may be assumed.	
Vacancy Rate	Family & Senior: 5% per year  NPLH & Special Needs: min 10% per year  Mixed Population: blended rate between 5% and 10%, with justification		



# **SUPPLEMENTAL DOCUMENT 7**

## **COMMUNITY OUTREACH GUIDELINES**



# SUPPORTIVE HOUSING

## COMMUNITY OUTREACH TOOLKIT







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# ACKNOWLEDGEMENTS

**This toolkit represents the hard work and contributions of many, all for one purpose: building more supportive housing and ending chronic homelessness.**

This work is intended to benefit the entire community of people who care about breaking the cycle of poverty and homelessness for the most vulnerable people in our society. From supportive housing developers to homeless services providers to community leaders, we all can benefit from using the most effective language and strategies in the effort to build supportive housing.

We would be remiss if we did not thank these partners specifically – among many – for their input and guidance as we have built this toolkit:

- Kelley Greenman and Tommy Newman, United Way of Greater Los Angeles
- Tim Iglesias, University of San Francisco School of Law
- Barbara Osborn and Molly Rysman, Office of L.A. County Supervisor Sheila Kuehl
- Phil Ansell, Gerardo Ramirez and Jennifer Kim, L.A. County Chief Executive Office
- Paul Hernandez and Ann-Sophie Morrisette, Fenton
- Richard Bernard and Adam Sonenshein, FM3

The supportive housing development community in Los Angeles County has been especially helpful in understanding the development process and the pressure points along the way. Over the course of many months they have been critical to understanding the communications and community engagement moments that exist in the life of a project. These developers include but are not limited to:

- Abode Communities
- A Community of Friends
- Clifford Beers Housing
- East L.A. Community Corporation
- Hollywood Community Housing Corporation
- LA Family Housing
- LINC Housing
- Little Tokyo Service Center
- Meta Housing Corporation
- PATH Ventures
- Skid Row Housing Trust
- Thomas Safran and Associates
- Venice Community Housing Corporation

We hope that the information shared in this toolkit is interesting, engaging and ultimately useful in the work to build supportive housing and end chronic homelessness.





# MESSAGING



# INTRODUCTION

Developers' ability to build supportive housing is key to ending homelessness. In order to be successful, developers need to communicate with and engage communities effectively. The messages and strategies contained in this toolkit are intended to empower developers and housing leaders to be successful messengers.

***Community outreach must use a holistic “package” of messages and strategies that build on and reinforce each other.***

LA County residents are extremely supportive of solving homelessness — and passed broad measures like Prop HHH and Measure H to do so. However, community residents will often have questions, concerns and fears about a new supportive housing development coming into their neighborhood. To address these concerns, community outreach must use a holistic “package” of messages and strategies that build on and reinforce each other.

The following Key Messages were informed by focus groups and research across the county, where Los Angeles County residents were presented with the possibility of a supportive housing development in their community. They are designed to address the most common concerns, questions and fears that emerge. Developers are encouraged to localize and individualize each message to best suit their proposed development and the unique characteristics of the community.



**Humanize  
Homelessness**



**Emphasize  
Community Safety**



**Explain Supportive  
Services**



**Clarify Tenant  
Selection**



### KEY MESSAGE 1: HUMANIZE HOMELESSNESS

Residents often associate homeless individuals with stereotypes of drug use, mental illness and poor life choices. Developers can humanize the homeless experience by describing the diverse paths that lead to homelessness.



### KEY MESSAGE 2: EMPHASIZE COMMUNITY SAFETY

Community members are generally concerned for their safety when learning of a new supportive housing building in the neighborhood. Explain that the well-being, safety and stability of building tenants and the wider community is a priority.



### KEY MESSAGE 3: EXPLAIN SUPPORTIVE SERVICES

Most residents are unfamiliar with supportive housing and assume that tenants will only receive shelter. Explain in detail the services that will support tenants to stabilize their lives (e.g. mental and physical health resources, job training and addiction treatment).



### KEY MESSAGE 4: CLARIFY TENANT SELECTION

Communities are often concerned about how building tenants are “selected.” Communicate who is moving in, why tenants have been matched to supportive housing, and clarify the requirements for tenants to maintain their units.

# MESSAGING GUIDE

## GENERAL GUIDANCE

- 1. Avoid the term “permanent supportive housing” and use the term “supportive housing.”**
  - Communities tend to see “permanent” as insinuating tenants will not become self-sufficient.
  - Residents respond positively to the term “supportive” as it indicates assistance to individuals.
- 2. Use clear, direct and jargon-free language.**
  - Research found that words like “case management,” “on-site services,” “supportive services” and even “nonprofit developers” were confusing and unfamiliar.
- 3. Describe building units with words like “homes” and “apartments” to humanize them.**
  - “Developments” and “projects” feel impersonal.
- 4. Residents are more likely to respond to messages from their neighbors or community leaders.**
  - Developers are not viewed as trusted messengers. The strongest messengers are trusted friends, community leaders and voices that are perceived to be impartial. Developers must lean on community partners and work together to engage community members.
- 5. Don’t get dragged into myth-busting about property values or crime. *(More info on following page).***
  - Instead, return to the key messages which address the crux of residents’ fears.
- 6. The messages that helped pass Prop HHH and Measure H won’t help residents accept housing in their neighborhoods.**
  - The message must evolve to address fears and concerns that weren’t present when discussing broad solutions and tax dollars.



## MESSAGE TRAPS TO AVOID

### The “Property Value” Argument

**Despite research that shows property values don’t fall, residents are unlikely to believe any message about property values. If possible, it is better to avoid them entirely.**

- Most residents who are most concerned about property values also distrust any research or data on the subject. Research found nearly all residents were unaffected by research about property values — so there is no point in engaging on this topic.
- For other residents, even if they talked about property values as a concern, it was not nearly as impactful on their support of the project as safety and community concerns. It’s critical to address safety, supportive services and tenant selection — and best to avoid this issue.

### The “Voters Supported This Housing” Argument

**Referencing Prop HHH and Measure H will not move the community to support the building. Most residents are unaware of the measures and even if they are, may have voted against them — it is best to avoid using the measures as justification for the development.**

- It is fine to reference HHH or H in the context of financing. In fact, explaining that there will be regular financial and performance audits as well as a citizens’ oversight committee helps residents feel more at ease and trusting, since these are measures of accountability that will be in place.

## KEY MESSAGE 1: HUMANIZE HOMELESSNESS

Research shows residents overwhelmingly associate homeless individuals with drug use and mental illness, and thus see their potential new neighbors as undesirable and dangerous. In many instances, community members view this population as irresponsible and having made bad choices that led to their situation.

Messages that humanize people experiencing homelessness are key to breaking down these stereotypes. It is essential that residents be reminded about the variety of circumstances that lead to homelessness to help inspire greater compassion.



### SAMPLE MESSAGES

- The residents moving into these new apartments are diverse and of different ages, backgrounds, cultures, education levels and experiences.
- There is no single path to homelessness, and each building resident has faced their own particular struggles that led to the devastating experience of having no home.
- We all know people who either need this kind of help now or may need it in the future. For our new neighbors, supportive housing is the first step on the path to a new life.
- Some residents may be survivors of domestic violence, some may have experienced a debilitating injury or illness, or a sudden and unexpected loss of income.



#### TIPS

- **Describe** the various factors and circumstances that lead to homelessness, such as loss of a job or domestic violence.
- **Emphasize** the desire of future residents to be in supportive housing and to better their lives.

➡ **ACTION ITEM:** Start developing your own inventory of messages to humanize homelessness.

## KEY MESSAGE 2: EMPHASIZE COMMUNITY SAFETY

Both supporters and opponents of supportive housing often attribute mental illness and substance abuse to homeless individuals. Residents may have witnessed extreme behavior and, as a result, worry that they and their families are at risk. Unless safety issues are confronted upfront, it will be challenging for local residents to listen to anything else.

While safety must be addressed, it is critical to avoid affirming negative stereotypes. Use inclusive messaging that highlights the safety and well-being of the entire community of current and new residents. Also note that people experiencing homelessness are disproportionately the victims of crime, and that they themselves want a safe and stable community.

### SAMPLE MESSAGES

- Our new neighbors have likely been victims of crime while experiencing homelessness and are eager to live in a safe environment.
- Qualified staff including trained health professionals, property managers and security personnel\*, are on-site to support the well-being of tenants and to respond to community concerns.
- The new homes will not be disruptive to your quality of life as the continued safety of our entire community is extremely important.
- The apartments will benefit from 24-hour presence of highly trained property management staff.

*\*If applicable*



### TIPS

- **Share** how the services and support that tenants receive will improve their well-being and stability in housing.
- **Consider** organizing a Community Input Board and designating a staff person as a neighborhood liaison, which allows neighbors to continue their relationship with the developer and/or property management company after the apartments open.
- **Illustrate** community support, including – where appropriate – law enforcement support.
- **Engage** local law enforcement early and mention their support in your messaging and outreach.

➡ **ACTION ITEM:** Develop messages that are unique to your project that can be used for your outreach.

## KEY MESSAGE 3: EXPLAIN SUPPORTIVE SERVICES

Community members may believe that supportive housing only provides shelter and that tenants will continue to struggle despite being housed. It is up to developers and community partners to explain how the building will function and successfully help individuals out of homelessness. Residents need to understand that their new neighbors will be supported to become self-sufficient through the services offered.

Residents recognize and believe that supportive services make a big difference. When asked to rate the importance of various building elements, they consistently choose job training, mental health support and addiction treatment as the most essential.

### SAMPLE MESSAGES

- Every day while living in these homes, residents receive the support they need to rebuild their lives.
- Apartments like these are helping our formerly homeless neighbors through physical and mental health services, addiction treatment, job training and other resources.
- If a new building resident has a mental health diagnosis or is overcoming a substance abuse disorder, they will get immediate access to treatment by professionals.
- Each resident has a case manager — a dedicated staff member who helps them to identify goals and works with them on an action plan to support their progress.



### TIPS

- **Address** the specific support services available to tenants with a mental health diagnosis and/or addiction, including the professional staff on-site who will administer these programs.
- **Consider** providing a “day-in-the-life” story. Does the resident visit an on-site health center? Attend workshops? Meet with a case manager? Help out with activities for other tenants? Volunteer in the community? Have a job?
- **Advertise** a housing tour of an existing supportive housing site, preferably in the same community/neighborhood or a similar community.

### EXAMPLE: A DAY-IN-THE-LIFE OF A SUPPORTIVE HOUSING RESIDENT

On a typical day, a resident will get up in the morning and have breakfast. Following breakfast, the resident may check in with the job training office, have lunch, then meet for counseling in the early afternoon. The late afternoon may be spent job hunting at the computer center followed by dinner with friends.

## KEY MESSAGE 4: CLARIFY TENANT SELECTION

It is common for communities to have questions about selection criteria for tenants, building rules and repercussions of “bad” behavior. Residents may worry about unruly behavior and dangerous/illegal activity by tenants and visitors to the building.

Without re-enforcing negative stereotypes, it is important to demystify who is moving into the building, emphasize why tenants have been matched to supportive housing, and illustrate accountability measures. Highlight that tenants are prioritized based on their level of vulnerability, such as mental and physical disabilities, and that efforts are made to place people in the same communities where they were experiencing homelessness.

### SAMPLE MESSAGES

- Our new neighbors are in need of immediate, stable homes. They have been matched to supportive housing because it will help them regain stability and well-being.
- The residents moving in have been prioritized for housing based on their level of vulnerability – for example, they may have been homeless many years, and/or have a physical disability.
- New tenants are required to undergo a thorough background check and sign a lease. Most will pay rent of up to 30% of their monthly household income.
- Residents are required to have room inspections, have a strict limit on how often they can have guests and are not allowed to disrupt neighbors in or outside the building.



### TIPS

- **Clarify** the requirements for tenants to maintain their units (e.g, background checks, paying rent). Be specific about what the building rules are and how you monitor them.
- **Highlight** that these requirements will be regularly tracked by building staff and address how dangerous and/or unlawful activity will be handled by staff and authorities.

## TIPS FOR COMMUNICATION MATERIALS

### Use visuals of the building judiciously.

- In the early stages, use pictures of existing projects, combined with massings of the proposed project, instead of specific design renderings. Gathering input early is more effective than highlighting specific designs.
- Strike a balance to show that the building and services will be sufficient to meet the needs of tenants without being extravagant. Residents want to see a building nice enough to overcome misperceptions of government-funded public housing but not so fancy that it seems tenants are unfairly getting “more than they deserve.”
- Use photos representative of the tenants who will be living in the building (e.g. women with children, veterans and people with physical disabilities) – these should figure more prominently than images of the building.

*Images: Clifford Beers Housing and Killefer Flammang Architects*



MASSING STUDY AT  
SOUTHEAST (FRONT) CORNER



MASSING STUDY AT  
SOUTHWEST (REAR) CORNER

### **Tie all messaging to the specific region and community.**

- Use pictures of people and buildings that are relevant to that particular area.
- Reference statistics that are specific to Los Angeles County and cite local experts. To the greatest degree possible, localize statistics to the community.
- Community leaders like to see trusted, local leaders are in favor of the building, so enlist supporters that are community members, local nonprofits, civic and business leaders and religious institutions (for some residents) rather than government agencies or countywide nonprofits.
- Emphasize law enforcement support in neighborhoods where police/sheriffs have good relations with the community. This is not always the case, so ensure you know the landscape before using law enforcement voices.

### **Be aware that individual “success stories” may be dismissed as exceptions.**

- Residents have a tendency to see stories of people who have been successful in supportive housing as “best case” scenarios and not indicative of the greater population. When using stories, look for ways to feature multiple and diverse examples.
- Tell stories that illustrate what life is like for supportive housing residents. Consider using a “day-in-the-life” of a tenant through text, photo or video that explains their background, the services they benefit from and their support network.



# TALKING ABOUT MENTAL HEALTH

When communities raise questions about a new supportive housing development, they often voice concern that tenants will suffer from mental health issues. A pervasive worry heard among residents is that the erratic, “scary” behavior exhibited on the streets by some individuals experiencing homelessness will persist even in housing, raising serious safety concerns. Residents must first understand how homelessness can exacerbate mental health issues and then understand how mental health services within supportive housing can address and stabilize those diagnoses.

In reality, supportive housing offers the solution to much of this behavior by providing the stability and services that individuals need for recovery. To understand that, residents must first comprehend how homelessness can exacerbate mental health issues and then recognize how mental health services within supportive housing can address and stabilize those diagnoses.

**Message: Communicate that housing coupled with mental health services help supportive housing residents recover and lead more stable lives.**

Communities are concerned that supportive housing residents will not receive necessary treatment. Residents must be assured that residents suffering from mental health issues will live harmoniously with the community.

## SAMPLE MESSAGES

*The recommendation is to use these in response to community questions and concerns, not necessarily in general messaging about supportive housing.*

- Supportive housing provides the stability and services that individuals experiencing mental illness need in order to recover and live healthy lives. Residents not only receive a safe, clean, quiet place to live but also comprehensive supportive services.
- When first moving in, individuals with a mental health diagnosis meet with experts including psychiatrists, psychotherapists and a dedicated case manager to develop a treatment plan to help them get settled in their new home.
- Mental health treatment and monitoring are consistent and ongoing and help residents transition into a stable, healthy lifestyle. For residents that may have exhibited severe behavior in the past, there is often a significant improvement in their well-being.
- Further, residents are expected to abide by building rules that promote community safety. Any behavior that causes disturbance to the community or threatens the safety of others may result in identifying more suitable living arrangements.





TIP

Personal testimonies and storytelling can go a long way. Sharing the experience of a formerly homeless tenant who received the mental health support they needed can help demystify mental illness and illustrate the effectiveness of supportive housing.

### Message: Connect the stressful circumstances of homelessness to mental illness.

Residents may not understand that the behavior they see exhibited in the street is often a result of untreated mental illness. Nor do they understand how the physical and mental stresses of homelessness can cause and/or exacerbate mental health issues. Make the connection for them, explaining how housing and the support services are the solution they are looking for.

#### SAMPLE MESSAGES

- People living without a home have experiences that generate a lot of stress — they are often exposed to violence and assault and are living in extreme uncertainty.
- This kind of stress contributes to and exacerbates mental health issues, which are made worse because people lack reliable and easy access to mental health services.
- Matching individuals to housing gives them access to the kinds of services (psychiatric care, psychotherapy, community groups, etc.) that provide support and help them cope and overcome their illness.



TIP

In general, there is a societal stigma about mental health. Know that community members may be uncomfortable or reactive when broaching the subject. The more straightforward, factual and comfortable you are in talking about mental health, the more likely you are to put residents at ease.

# FAQS

## I. GENERAL FAQS

These are general FAQs that can be used in the marketing collateral created to educate neighbors. Don't use them all, but pull out five to six FAQs that are most relevant to your development (edit them if needed to ensure accuracy) and create a fact sheet to hand out to neighbors.

### Basics

#### What is supportive housing?

Supportive housing combines apartments and on-site services to help individuals transition into living healthy and productive lives. Research shows that this form of housing is the most effective way to end homelessness through providing people safe, clean and stable homes with resources such as mental and physical health services, addiction treatment, job training and case management. There are nearly 150 apartment buildings like this throughout Los Angeles County, and they have proven to be successful for both the building residents and the surrounding communities.

#### Who lives in supportive housing?

Residents are diverse and of different ages, backgrounds, cultures, education levels and experiences. There is no single path to homelessness, and each person moving into supportive housing has faced their own particular challenges and struggles that led to the devastating experience of having no home. They may be survivors of domestic violence, or may have experienced a debilitating physical ailment or a sudden and unexpected loss of income. Some apartments serve the general population while others are targeted to a specific population such as seniors or veterans.

#### How are tenants selected?

The residents joining our community have been prioritized for supportive housing based on level of vulnerability, such as people who have been homeless many years and/or have a physical disability. Our new neighbors are desperately in need of immediate, stable homes. They have been matched to supportive housing because it will help them regain stability and well-being. Every tenant undergoes a thorough background check and must follow building rules and requirements.

## Do tenants pay rent?

All tenants are required to sign a lease before moving into an apartment. Those tenants who have income — either through a job, social security or veteran benefits, for example — are required to pay up to 30 percent of that monthly income for rent.

## Who pays for supportive housing?

In November 2016, Los Angeles voters approved a ballot measure, Prop HHH, to fund supportive housing across the city. Developers who access HHH and other city funds are accountable to the Administrative Oversight Board and the Citizen's Oversight Board review and approval. Supportive housing in the greater LA County is funded through a combination of City, County, state and federal funds as well as through private grant programs. LA County and private funders also have rigorous evaluation and accountability measures in place for any funding they provide. All funding sources require the developer to manage and maintain the property for several decades, often 50 years or more. This ensures that supportive housing apartments are maintained and safe for the long-term.



## What do the buildings look like?

Supportive housing buildings are designed to reflect the look and feel of the surrounding community, and a person passing by would not be able to identify it as a supportive housing building. It is common for a developer to engage local residents in giving feedback on the building designs and plans to make sure it integrates fully with the neighborhood.

## Safety and Security

### Who manages the buildings?

Supportive housing is generally operated by a local nonprofit or property management company who is highly trained and skilled in managing similar types of buildings in a way that maintains community safety and provides the right kinds of services to tenants.

### How does supportive housing ensure the safety and security of the surrounding community?

The safety of building tenants as well as the surrounding community is of utmost priority. Some apartments have onsite security and benefit from 24-hour presence of highly trained property management staff, which is required by California law for all apartment buildings of 16 or more. Staffing requirements increase as the size of the building increases to ensure the building can be properly maintained. Security and staff are there to ensure that residents are accountable to the strict building rules and are being good neighbors to the community. Disturbances, excessive guests or illegal activities will be immediately addressed by staff on site.

## How do you ensure tenants do not cause disturbances in the neighborhood?

When residents move into a building, they are immediately matched with intensive supportive services to help ensure that they are prepared and stable enough to live in the apartments. There are building rules and security cameras in place to ensure residents are held accountable to these rules. Residents are not allowed to engage in illegal, dangerous or disruptive activities, and there are consequences for not meeting these requirements, including eviction. On-site staff, including – in some buildings – highly trained security personnel, caseworkers and property managers are always available to respond to any community concerns and to prevent any problems from occurring.

## Supportive Services

### What services are available to tenants in supportive housing?

When residents move into a building, they are immediately paired with a case manager (a dedicated staff member who helps each tenant identify goals and track progress), who matches them to the supportive services they need to get their lives back on track. These include: medical treatment options and specific supports for tenants with a mental health diagnosis and/or addiction; employment programs and job training; and life skills training such as financial management and decision-making. All these services are administered by professional staff on-site including social workers, psychotherapists, psychiatrists and resident managers.

### How does supportive housing help residents who might have mental health diagnoses?

Matching formerly homeless individuals to housing gives them access to the kinds of support needed to cope with and overcome their illness. When first moving in, individuals with a mental health diagnosis are connected with appropriate services (psychiatric care, psychotherapy, community groups, etc.) to develop a treatment plan to help them get settled in their new home. They meet individually with experts including psychiatrists, psychotherapists and a case manager (a dedicated staff member who helps each tenant identify goals and track progress) and also receive any needed medication. This treatment and monitoring are consistent throughout their stay in their home and help residents transition into a stable, healthy life.

### How does supportive housing help residents who might have drug or alcohol addictions?

If a resident moves in and has an addiction, they are immediately offered appropriate services (psychiatric care, psychotherapy, community groups, etc.) to develop a treatment plan in order to overcome their addiction. In addition to general supports such as case management (a dedicated staff member who helps each tenant identify goals and track progress), they are connected to immediate and intensive recovery programs. The stability and services offered with housing allow individuals to recover and lead productive lives.

## II. QUESTIONS TO CONSIDER

While community members may have general questions about supportive housing, more often they want specifics about the building coming to their neighborhood. Lack of clear information about the development can lead to wrongful assumptions spreading in the neighborhood and can increase community frustration and opposition, thus it is critical to be prepared.

In addition to the General FAQs, consider creating an internal FAQs “cheat sheet” for your internal staff and community partners. Whether in a public meeting, small group setting or one-on-one discussion, you’ll want to be prepared to answer the following questions specifically and accurately. Refer to the **Messaging Guide** for key messages to inform your answers.

### Basics and Tenants

- Who will be living in the building?
- How are tenants selected?
- What will the building look like? Will it “fit” into the neighborhood?
- What is the location of the building?
- How many units will there be and how many building levels?
- Do tenants get to live in the building forever for free?

### Safety and Security

- What kind of security will be in place?
- Will tenants cause disruptions to the community?
- What happens if a tenant “acts out” or causes a disturbance?
- Does the project have the support of local law enforcement?
- What will be done to keep unwanted “visitors” away from the building?

### Services

- What specific resources will be available to tenants?
- Who is providing the services and how often?
- Will people with mental illness and/or addiction live in the building?

### Community Integration

- Can I provide feedback on the building design?
- Will I get to see the inside of the building before it opens?
- Do I have a say in who moves in?
- How can I be involved in giving feedback after the building opens?
- Who can I speak to if I have an issue with the building?

➡ **ACTION ITEM:** Practice these questions with staff and role play as if you were in a community meeting.





# COMMUNITY OUTREACH

# TOOLS FOR COMMUNITY OUTREACH

Successfully engaging the community is imperative to gaining the political support for a project. Developers should consider the tips below to improve their outreach strategies – starting engagement early and using creative tactics that help avoid large community meetings – which are often the ones most likely to backfire and organize opposition. Before any general community meeting is scheduled, consider these strategies below:



**TIP**

**Read our Six Steps to a Successful Community Outreach Strategy to learn a tried and successful method for engaging local communities and winning political support.**

## BE PROACTIVE – START EARLY AND OFTEN

Neighborhood concern typically occurs very early in the development process. As a result, affordable housing practitioners need to engage early and often. It is not advised to try to stay quiet and hope to “sneak the project” by the community.



**TIP**

**Be prepared to have between 5–10 small meetings before any approvals are needed.**

## PARTNER WITH COMMUNITY EXPERTS TO SHAPE YOUR OUTREACH STRATEGY

Partnering with local community “experts” – whether a consultant or an organization – can be a way to gain information that might make community outreach easier and the politics simpler. Partners should be engaged early and their information incorporated into community engagement efforts at the outset.



**TIP**

**Information is power – the more you have, the better off you will be. Partner with local organizations to understand your project area, and don’t assume you have all the info you need.**



**See also**  
**SIX STEPS TO A SUCCESSFUL**  
**COMMUNITY OUTREACH STRATEGY**



### IDENTIFY, RECRUIT AND MOBILIZE ALLIES AND SUPPORTERS

Finding, organizing and mobilizing supporters should happen before any other community outreach begins. Once some neighbors express support it becomes easier to identify other supporters. Local groups like faith organizations, businesses, service organizations and other community groups can all identify local supporters.



TIP

Collect letters or quotes of support to show the community and elected officials.

### FOCUS ON SMALLER GROUP INTERACTIONS

Hold multiple small group meetings instead of a large community meeting, especially early in the process. You may inadvertently give concerned neighbors a forum to find each other and organize, whereas small group interactions allow for more diverse opinions to be heard. Consider housing tours, small focus-group style meetings and small group meetings with local leaders.



*For more on how to organize small gatherings, see  
**COMMUNITY MEETING BEST PRACTICES***

### GAIN TRUST WITH CONSISTENT REPRESENTATION

Ensure consistency among your neighborhood representation, sending the same staff to community forums so they can build relationships and get to know the community. This helps build trust and overcome negative perceptions of new developers.

### UTILIZE COMMUNITY VOICES IN YOUR OUTREACH

Research found that neighbors and community leaders are seen as trusted sources of information, especially compared to developers, who are usually approached with skepticism and distrust. Incorporate creative ways to highlight the voices of local experts and community leaders into your community outreach — inviting them to speak at meetings or conduct their own individual outreach to share why they support the development. Community experts can also be your greatest advocates online — consider providing them a social media toolkit with specific content to share about the benefits of the new housing and why they support it.



## PAY SPECIAL ATTENTION TO THE CLOSEST NEIGHBORS

These neighbors want to feel like their opinion matters and frequently want recognition that they are most impacted by the project. If the number of adjacent households is small, canvass door-to-door on a weekend to meet the neighbors face-to-face. Consider mixed gender, multi-lingual, multi-generational and racially diverse teams.



**TIP**

**Be willing to hear the fears and concerns of the closest neighbors, and acknowledge their burden before trying to alleviate it with information.**

## PROVIDE AN ONLINE FORUM FOR ACCURATE INFORMATION

Ensure there is a place online for residents to find out more about the development. This can be a simple landing page hosted on the developer (and, even more ideally, community partner) website with basic information such as an “About” or “FAQs” page. Update the page as you gain more insight into what the community would like to learn, and add content such as messages of support from local partners/community leaders and images of the building in-process. Include a short survey to provide a feedback forum. Neighbors will appreciate increased ways to voice their opinion.

## ENLIST SUPPORTERS TO HELP WITH ONLINE COMMUNITY SPACES

Identify a few supporters in your key neighborhood and then find out how those people communicate through social media. Is it Nextdoor? A Facebook group? Figuring out where people are talking is the first step. The second step is encouraging supporters to contribute their perspective to online conversations — not to be argumentative but merely to offer a different voice (discourage them from becoming involved in a “tit-for-tat” conversation with particularly concerned neighbors). Supporters can encourage neighbors to visit the developer’s website to learn more about the development and can share key messaging and information.



*See also*

**ADDRESSING COMMUNITY CONCERNS**



**TIP**

**Consider using paid media. Facebook ads targeted by zip code can be a relatively low cost way to reach residents.**

# SIX STEPS FOR A SUCCESSFUL COMMUNITY OUTREACH STRATEGY

While every situation is different and there are no “silver bullets,” this handout summarizes a proactive and collaborative strategy that has been successfully used in the San Francisco Bay Area over the last several years.

## KEY STEPS:

1. **BEFORE ANY COMMUNITY OUTREACH HAS TAKEN PLACE** — Development team works with local advocates and experts, meeting early in the development process to research, assess and plan the key areas below, conducting a high-level review of the development landscape.
2. Prepare a **POLITICAL STRATEGY** which coordinates all your work towards getting the votes you need.
3. Prepare a strategy to build active **COMMUNITY SUPPORT** for the proposal.
4. Prepare a strategy to work through concerns of community members and deal with **EXTREMELY CONCERNED COMMUNITY MEMBERS**.
5. Prepare a strategy to protect and use your **LEGAL RIGHTS**.
6. Prepare a **PUBLIC RELATIONS/MEDIA STRATEGY** to send your message to decision-makers and the public.

This individual planning approach is like a “due diligence” or “case management” process in which you consider and make deliberate decisions about the key areas that may be important for every development proposal. Conducting this planning process is not the same as deciding to adopt a high visibility entry but rather can inform how and when you enter a community.

# 1. HOLD PLANNING MEETINGS TO RESEARCH, ASSESS AND PLAN THE KEY STRATEGIES.

Schedule two or more meetings of the entire development team together with local advocates and experts to share and review information about the community around the development. Examples of local advocates and experts might be: neighborhood council allies, local neighborhood service providers or nonprofits who know the area's politics or community organizing consultants in that area.

**At the first meeting, draw on the collective experience of others to gain insight into the strategies for community acceptance.**

**Use the room's collective brainpower to assess:**

- Your organization's reputation, capacity to attract broad community support for its work and its previous experience in dealing with local government, opponents and the media.
- What local government approvals are required, who will decide, what is the process and criteria for decisions and an expected timeline.
- Local government's current knowledge of and support for affordable housing, your organization's work and the current proposal.
- Full analysis of the neighborhood surrounding the proposed site (history, problems, organizations, concerned neighbors, supporters, etc.).
- Likely concerns neighbors might have about your proposal, the neighborhood's experience with similar programs and its potential for organized opposition.
- Potential legal issues associated with your development proposal, including your organization's and clients' legal rights.
- The regional and local media's approach to your work and clients.

**Based on these assessments, you need to determine:**

1. Your strategies toward local government, potential supporters, concerned neighbors, legal issues and the media (see steps 2–5);
2. Staffing required to implement your strategies; and
3. Any consequences for your proposal's timeline, funding needs or site selection.

Each strategy should have a clear plan of action: who will do what, when, how and with whom. Each strategy should be coupled with considerations of timing — when to reach out and implement each plan. Expect to change and improvise your plans as you go along. You won't regret your planning because it will help you manage the process and avoid some fire drills and surprises.

### 2. PREPARE A POLITICAL STRATEGY.

**If the crucial vote were taken tonight, do you know who would vote for and against your proposal?**

Who are the “key leaders” in this community who influence the political decision-makers? To find them, always ask: “Who else should I talk with about this?”

- Identify where your decision-makers stand on your project.
- Determine education and advocacy efforts needed to keep supporters, neutralize opponents and win uncertain votes.
- Document everything and tell your best story at public hearings, usually something like: “We’re a professional, community-based group with significant community support meeting a critical need, and we’ve done everything we can to reasonably respond to neighbors’ legitimate concerns...”

### 3. PREPARE A STRATEGY TO BUILD PUBLIC SUPPORT.

**Don’t fall into the trap of spending all your time and energy responding to combative community members.**

Active, vocal community support for your proposal will help you get political support, counter your opponents, tell your story to the media and, when appropriate, say hard things that developers usually do not want to say.

- Identify and prioritize actual and potential supporters, including tactical allies. Think widely about your potential allies.
- Develop solid support for the proposal (at least in the broader community) before contacting combative community members.
- Organize and support your allies with background information, housing tours and up-to-date information.
- Mobilize supporters at critical points (e.g. using a database and email lists).
- Keep them informed and encouraged.



NoHo Senior Villas, Clifford Beers Housing



### 4. PREPARE A STRATEGY TO ADDRESS COMMUNITY CONCERNS.

Only when you understand why a person opposes can you select the best response.

Do not create an open forum for combative community members to organize themselves against you. Consider alternative methods for community outreach (e.g. door-to-door canvassing, open house forums or small house meetings) instead of the large open community meetings.

- Use an issue-based strategy for working through local community concerns.
- Find out the probable basis of their concerns before fashioning a response (e.g. misinformation, fears about impacts, expectation to participate, legitimate conflicts of interest, prejudice or issues unrelated to your proposal).
- Prepare appropriate responses to each kind of concern (e.g. education, reassurance by trusted authority, negotiation or clarifying legitimate from illegitimate issues).



See also

**ADDRESSING COMMUNITY CONCERNS**



### 5. PREPARE A LEGAL STRATEGY.

Learn to assert your legal rights without litigation.

Identify the legal rights of your organization and your prospective tenants/clients and learn how to spot potential legal violations. If your proposal is likely to encounter illegal discrimination or raise complex legal issues, contact legal assistance immediately to learn what you should do now to protect your rights and how and when to get further legal assistance.

- Work with legal advocates to identify how to protect and assert your legal rights without litigation (e.g. by educating the city attorney early in the process).
- Keep records of all statements, flyers, etc., that may be evidence of discrimination.



See also

**LEGAL TOOLS**

### 6. PREPARE A PUBLIC RELATIONS/MEDIA STRATEGY.

**At the very least, select and prepare a media spokesperson, your message and some easily emailed information.**

Before you get any media coverage on a proposal, decide if you want to generate media coverage (proactive strategy) or if you want to be able to respond effectively to any media coverage you receive (reactive approach).

- Designate and prepare spokesperson(s) including former clients and supporters.
- Develop your message(s) and for your target audiences (e.g. decision-makers).
- Prepare brief, easily-emailable fact sheets about your organization, the proposal, your supporters and your efforts to resolve legitimate community concerns.
- Invite reporters for a tour of your existing facilities and to meet your staff and clients.
- Follow up on any coverage you receive with thank you's and corrections.
- Develop ongoing relationships with media (to the degree your resources allow).

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**Source:** • *Building Inclusive Community: Tools to Create Support for Affordable Housing*, HomeBase, 1996.

# COMMUNITY MEETING BEST PRACTICES

Community meetings can be an opportunity to address concerns. However, smaller meetings are more effective to address any major push back or concerns. The traditional large community meetings often allow vocal critics to find each other and organize. In a worst-case scenario, combative neighbors can dominate the microphone, persuading neutral listeners and derailing any information-sharing. To avoid these outcomes, consider alternative formats for the meeting itself, and try to abide by these simple rules..

- 1. Avoid any large group gathering, even for brief periods of time.** Instead keep participants in smaller groups for the duration of your meeting.
- 2. Don't have a microphone at the meeting.** If you need one for the space, consider a lavalier or handheld mic that never leaves the possession of one moderator.
- 3. Have a neutral party moderate the event** – not the developer. Consider local neighborhood leaders or contacts at nearby universities. Make sure they have the skills to moderate and control the dialogue, including: impartiality, respect for the community and the ability to diffuse tension and move the conversation along.
- 4. Arrange to have supporters in attendance,** ideally people known in the community.
- 5. Always have a staff member to take notes** on recommendations or concerns of community members. Be prepared to follow up on these concerns at the next meeting.

## ALTERNATIVE MEETING FORMATS

### Multiple Table Breakout

Have multiple tables or stations around the room that each cover one topic relevant to the project – with a representative from the project or a partner organization at each station, prepared to address questions. Leverage community partners to help at each station, and have visual aids like posters that emphasize photos, not text. Tables can offer a conversational format or a brief presentation followed by Q&A. Every 10–15 minutes, attendees can be instructed to move to the next table. Have volunteers around the room who are directing the participants and breaking up informal group conversations that might be hostile.



TIP

Have a “Project Design” station with the architect and developer, a “What is Supportive Housing” table with CSH or United Way or a “Traffic and Community Safety” table with a police officer and property manager.

### Small Community Listening Sessions

Hold a series of small, targeted listening sessions. Invite specific representatives from different neighborhood groups, keeping total group size below 20. Ensure that supporters are present, but you want to have genuine community representatives in the majority. Have a third-party moderator and invite your property managers and even third-party organizations like CSH to give five-minute presentations in an informal manner, followed by a roundtable discussion. Invite participants to make suggestions, ask questions and share concerns. The moderator should be skilled at moving the conversation along, and the presenters, including the developer, should attempt to listen carefully and not dominate the conversation with “answers” or responses.



### Community Open House

To accommodate community members’ schedules and for convenience, consider hosting “drop-in” hours where community members can stop by a location in the community like a local library or community center to hear about the proposal and provide feedback. Make sure to have information about the development on-hand, such as a simple one-pager and/or poster board images of the building design. Provide a sign-up sheet to capture contact information and follow up with email updates and more information for residents.

#### WHY SMALL GROUP SETTINGS?

- Smaller groups are more productive and are better for addressing major concerns
- Communication can be more intimate and facilitate trust building
- Avoids grand-standing and leaves space for voices of support to speak up
- Smaller groups make it easier to diffuse tense or negative situations

## MEETING TIPS

### Preparation

- Think about your own appearance at the meeting — you want to show respect by looking professional and competent, but avoid looking too slick.
- Arrange for translation and childcare at the event, if needed by the community.
- Arrange for simple refreshments, if possible from a local business.
- Make sure your invitations reach the right audiences — don’t lose control of the meeting agenda.



## Facilitation

- In addition to a neutral moderator, consider a neutral convener — someone to invite attendees and host the event who isn't tied to the developer or development.

## Discussion

- Prepare supporters to be helpful — raising questions or helping with the format of the event.
- Consider having a current tenant or prospective resident speak to “humanize” the need for the project. Ideally this is a tenant who has extensive training like the CSH SpeakUp! Program.
- Have a neighbor of a former development — who opposed and now supports the development — speak. They are likely to be the most powerful voice of persuasion to existing opponents.

## During the Meeting

- Start and end on time.
- Make sure everyone can hear.
- Don't hesitate to say “I don't know, I'll get back to you on that” and be scrupulous about getting contact info and getting back with the answer. It is much better than risking a half-truth or wrong answer, which can destroy trust.
- Do not engage in bargaining during the meeting. Graciously accept ideas and explain your process for considering them. Be clear about any constraints or limitations that may make some ideas impossible.
- Keep the tone of the meeting friendly — use humor and relevant anecdotes.

## Handling Combative Questions



*See also*

**ADDRESSING COMMUNITY CONCERNS**

- Do not allow hostile questioners to dominate the meeting. To respond to hostile questions, first restate the question then look at people other than the questioner while responding to include everyone in your answer. (This can be difficult as we are so programmed to lock into dialogue with the questioner).
- Accept that you may be unlikely to convince some community members of the benefits of supportive housing during a public meeting. Your goal is to prevent their opposition from infecting others who are undecided or supportive.
- Do not ask a combative neighbor, “Did that answer your question?” because it will provide an opening for the questioner to continue to dominate the discussion.

## After the Meeting

- Follow up on unanswered questions.
- Fulfill any promises or commitments made during the meeting.
- Debrief with other meeting planners — note what worked and what you will change for the next time.

# ADDRESSING COMMUNITY CONCERNS

## DOS AND DON'TS

*Adapted from "How To Speak In Public About Affordable Housing,"  
Nonprofit Housing Association of Northern California.*

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|--|---|
| <ul style="list-style-type: none"><li>✗ Don't try to convince each person of the total truth and righteousness of the cause.</li></ul> | <ul style="list-style-type: none"><li>✓ Remember your goals: to provide information, to present a human face, to begin a dialogue and relationship.</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't answer each question with a stock response.</li></ul> | <ul style="list-style-type: none"><li>✓ Listen to the actual question and its nuances, and pay attention to the questioner (body tone, language, demeanor).</li><li>✓ Take time to think about your response.</li><li>✓ Probe the questioner if you suspect there's more behind the question: "Does your question/concern come out of a particular experience you have had?"</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't talk about concerned neighbors' "perceptions" or "misperceptions" (e.g. "I see how you perceive the building"). That implies these are just feelings not grounded in real data or fact.</li></ul> | <ul style="list-style-type: none"><li>✓ Use the words "concern" or "apprehension" instead.</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't give "facts" that you are not sure about.</li></ul> | <ul style="list-style-type: none"><li>✓ Acknowledge a query as a factual question about which you'll need to find more information.</li><li>✓ Promise to get back to the person and be sure to follow up.</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't contradict the questioner's own experience and feelings of local opposition of a particular development.</li></ul> | <ul style="list-style-type: none"><li>✓ Put the experience in context.</li><li>✓ Acknowledge that you aren't familiar with all the facts of the situation.</li><li>✓ Acknowledge that developers (like everyone else) do make mistakes sometimes.</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't present yourself as an expert on every issue related to supportive housing.</li></ul> | <ul style="list-style-type: none"><li>✓ Give yourself permission to say, "That's a good question. I don't know the answer right now but can find out more for you."</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't refer vaguely to all developers or developments.</li></ul> | <ul style="list-style-type: none"><li>✓ Speak from your own experience about particular developments you know.</li></ul> |
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| <ul style="list-style-type: none"><li>✗ Don't stop the education with one conversation or presentation.</li></ul> | <ul style="list-style-type: none"><li>✓ At every occasion share other opportunities for engagement: housing tours, small group conversations, etc.</li></ul> |
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- SUPPORTIVE HOUSING – COMMUNITY OUTREACH TOOLKIT

## I. HOW TO DEAL WITH VOCAL CRITICS IN A GROUP

In a group setting such as a public meeting or information session, you can expect that community members will have diverse opinions, concerns and questions about the proposed development. Your audience may also include particularly outraged and vocal opponents.



**Watch your words.** Hostile opponents are already on the defense, so your language matters.

**Your #1 priority when faced with a vocal critic in public is to diffuse tension in the room and to stay in command of the conversation.**

- Do not pass around a microphone to avoid vocal critics from dominating the meeting.
- To respond to combative questions, first restate the question then look at people other than the questioner while responding to include everyone in your answer. (This can be difficult as we are so programmed to lock into dialogue with the questioner).
- Accept that you are unlikely to change an extremely concerned neighbor's opinion in a public meeting. Focus your efforts on engaging with residents who are undecided or supportive.

## II. HOW TO RESPOND TO A VOCAL CRITIC

It can be intimidating when faced with combative neighbors in a public setting, and your nerves can get the better of you. Listen to what is being said, stay calm and respond to sensible inquiries while also keeping the conversation focused and on track.

- **If residents air reasonable grievances, make sure to validate them** (e.g. "I understand your worry about on-site security, and appreciate you sharing it with me.")
- **Do not try to explain away the concern**, but listen to what may be the underlying worry (Is it about who will be living in the building? Safety? Process?) and respond with the top-line effective messaging we know works.
- **Avoid getting into a "tit-for-tat."** Address your response to the larger issue and always tie your answer back to the key messaging provided.
- **Do not ask a combative questioner, "Did that answer your question?"** because it will provide an opening for the questioner to continue to dominate the discussion.
- **Do not be afraid to shut down the conversation if it's not productive.** In fact, it is the facilitator's job to move the conversation along. Others in the audience will be grateful you're keeping the discussion in check.

**Question:** *"I've heard the building will allow people to use drugs on-site. I mean, that's just crazy! We can't have that kind of behavior in our neighborhood. And that's why I've started a petition against the building."*

**Answer:** *"I have heard concerns about drug use from other residents, and I can see why that would be a worry to people. Some of the building tenants may be suffering from drug addiction, and for those individuals we will offer immediate and intensive recovery programs. And I want to clarify for you and others who may share your concern: there will not be drug use on-site. In fact, there are building rules that include consequences for any drug use in the building."*

## IV. HOW TO RESPOND TO ONLINE CRITICISM

Without an opportunity to talk face-to-face, conversations online can escalate quickly, particularly when individuals feel that they're talking to a large, faceless organization. Keep the tips above in mind and adapt them for online spaces, but know that you also have the opportunity to provide community members with additional information and resources (website links, videos, etc.) that you can use to point them in the right direction.



TIP

**Stay focused.** There are some opponents that simply will not budge from their position. Rather than trying to change their opinion, focus on lessening their influence on others, such as minimizing opportunities for them to distribute false or misleading information.

- **Listen to people's concerns.**
  - Revise your comments and content based off people's concerns and feedback. Perhaps there's an opportunity to invite them to an in-person small group meeting or sit down with them one-on-one. Online conversations can (and sometimes should) become opportunities for in-person connections.
- **Personalize your responses.**
  - Add personality to your conversations by signing each response with the name of your community manager. For example, "Thank you for sharing your concerns with us. — John"
- **Diffuse tension.**
  - Rather than using stock responses, customize the message slightly for each person's concern.
  - If someone continues to berate you after you've provided a clear answer, stop engaging with them and they'll eventually stop commenting.
- **Hide comments if necessary on Facebook.**
  - If someone uses inappropriate language, "hide" the comment and do not engage with them further. The person who commented and their friends will still see their post, but others will not. This allows you to control the conversation if someone is inappropriate or unreasonable.
  - Note that you cannot hide or delete comments on Twitter. You can report comments as "spam" only if they are posting spam-related content.

**Sources:**

- Felicity Miller, "Risk Communication: 5 Steps to Reduce Public Outrage," Posted November 15, 2016.  
<https://consultationmanager.com/risk-communication-5-steps-to-reduce-public-outrage>
- Peter M. Sandman, "Hostile Meetings: When Opponents Want to Talk," Posted March 30, 2010.  
<http://www.psandman.com/col/hostile.htm>





# POLITICAL OUTREACH



# COMMUNICATING WITH DECISION-MAKERS

It is critical to develop a good relationship with political decision-makers and become a trusted source of information and guidance to them. Use your time wisely with carefully planned meetings, be sure to listen to what they are saying (and not saying) and provide information that is useful to them. Their interests are often aligned with what they think is best for the community, so be prepared to show evidence of local support and make the case for why your position is in the interest of their constituents. Use the tools and techniques below to prepare for successful meetings with local decision-makers.

## GOALS

- Persuade the decision-makers to support your request or fully understand their position and why they are taking it (you don't have to agree).
- Become a trusted resource for future information on your issue and related matters.
- Be seen as their ally in improving the community and benefiting their constituents.

## KEY TECHNIQUES

- Make it easy for them to say yes by making your request specific and relevant to their interests.
- Carefully select your arguments and statistics.
- Show that you represent hundreds of voters through your organization's membership and its allies.
- Be exceedingly accurate, truthful and polite.

## GROUND RULES FOR MEETINGS

- Plan your visit carefully. Be clear about what it is you want to achieve and ask of the official.
- Keep a focused agenda; don't cram every topic you care about into one meeting. Only 2–3 key points are likely to be communicated, so plan those out carefully, and be clear how you will communicate each of them.
- Be punctual and patient. If the official is late or your meeting is interrupted, be gracious and flexible. If the opportunity presents itself, continue your meeting with a staff member.

- Be prepared. Whenever possible, bring to the meeting information and materials supporting your position. (Even if you sent them in advance, bring more copies with you). Plan to leave these materials with the decision-maker at the **end** of your meeting. Providing the materials at the beginning will distract from your verbal presentation.
- There is strength in numbers and strange bedfellows. Build coalitions that are as broad and deep as you can make them. Bring those coalitions to the meeting if it makes sense or evidence of their partnership, like letters of support.

## STRATEGIES FOR SUCCESSFUL COMMUNICATION

- **Start where they are, not where you are.** Ask questions about what they understand and their concerns so you can speak to the issues that are most pressing for them in the context of what you need.
- Be helpful. Officials want to represent the best interests of their district. Whenever possible, **demonstrate the connection** between what you are requesting and the interests of the community.
- Be prepared to explain how you will **offer political support**, if you are asking the official to take a position that puts them out on a political limb.
- Don't do all the talking; **have a conversation**. It will help endear you to the lawmaker and give you valuable information about the lawmaker's views and concerns.
- Don't be afraid to **admit you don't know something**. If an official wants information you don't have or asks something you don't know, say that you don't know and then offer to get the information. Be sure to follow through!
- Offer a **follow-up opportunity**, such as a tour through the community or invitation to an upcoming event that will show officials what you want them to see.
- Be sure to **thank officials** for their service to the people.





# LEGAL TOOLS



# HOW TO USE PRO-AFFORDABLE HOUSING LAW

Some developers are familiar with the laws most often used by opponents to block or delay developments. However, there are also several laws that affirmatively support the development of affordable housing, including some that are useful before and during local opposition conflicts. This primer will talk about how developers and sponsors might use these “pro-affordable housing laws” effectively, as well as some discussion of problems related to using these laws.

Developers are frequently reluctant to invoke legal rights — even if they are aware of these laws — because of the risk of souring their relationship with elected officials. However, using the laws doesn’t necessarily require a lawsuit or even require that the developer play hardball. Instead, you can use this information to convince a decision-maker of their legal obligation to build low-income housing, or give them political cover to do the right thing.

## RECOMMENDATIONS

- Keep careful files of all records.
- Save any newspaper articles published about the development and any flyers or other written materials produced by the opponents.
- Try to get statements of concern from potential opponents and statements by local government staff about “what is required to get approvals in writing.”
- Make sure any oral or written statements that your organization makes in any forum are absolutely accurate and consistent.
- Make notes of statements made at meetings in the neighborhood, or record the meetings.
- Get copies of the transcripts of public hearings soon after the hearing in case the files expire.



NoHo Senior Villas, Clifford Beers Housing

# OVERVIEW OF PRO-AFFORDABLE HOUSING LAW AND POLICY

Below are federal and state statutes that override local government control or limit its discretion.

### Housing Element Law (California Government Code §65580 et seq.)

State law requires each local government to adopt a “general plan” to guide its land use decisions. As part of this plan, each city must adopt a legally adequate “Housing Element.” A Housing Element is a city’s plan for how to address the housing needs of all income levels, including groups with special needs, such as individuals with disabilities, elderly, large families, families with female heads of households and individuals experiencing homelessness.

While not requiring local government to provide housing, this law can be used to force local jurisdictions to deal with the housing needs of all income groups and those with special needs in several ways: by challenging exclusionary zoning, by changing zoning to enable affordable housing to be built and by adopting policies and programs responsive to the identified needs of low income and special needs groups.

Once adopted, an adequate Housing Element has the status of law and can be used to force the city to perform what it promised to do in the plan. It can also be used to support a particular proposed development by showing that the development is consistent with the city’s own statement of needs and helps fulfill those recognized needs. Generally, a city must revise the element every five years.

### Fair Housing Law (42 U.S.C. § 3601, et seq. and California Government Code § 12900, et seq.)

Federal and state statutes prohibit discrimination by local government ordinances, practices and decisions against persons with disabilities and people who belong to a protected class based on race, color, religion, sex, familial status, marital status, national origin or ancestry. “Discrimination” includes both actions which are motivated by discriminatory intent as well as those which have a disparate impact on protected classes. In the case of people with disabilities, local government must also make “reasonable accommodation” to provide them with fair housing choices. Fair housing law also prohibits private citizens from using intimidation, threats, coercion or harassment to interfere with the housing rights of the individuals protected by the law.

This law can be used to prevent local governments from making decisions about affordable housing developments based on discriminatory grounds urged by opponents of the proposal; to steer them to consider only legitimate concerns such as density, traffic and parking; to challenge pretextual uses of legitimate concerns; to prevent the imposition of additional requirements or procedures on affordable housing proposals; and to pressure local government to make reasonable accommodations necessary for project approval.

### Anti-Nimby Statute (California Government Code § 65589.5)

This state law requires that if a local government disapproves a low- or moderate-income housing development land use proposal or conditions approval in a manner which makes the development infeasible, it must provide one or more of six of the following specific reasons based on “substantial evidence:”

- The project is not necessary for the jurisdiction to meet its fair share of regional housing needs.
- The project would have a specific, adverse impact on public health or safety which cannot be mitigated without making the project unaffordable.
- Compliance with state or federal law requires disapproval or conditions which make the project unaffordable.
- Approval of the project would further concentrate lower income housing in an area that already has disproportionate amount of such housing if there is no suitable alternative site.
- The project is proposed for a site zoned for agricultural or resource preservation, is surrounded on at least two sides by land being used for such purposes or does not have sufficient water or sewage facilities to serve the project.
- The project is inconsistent with the jurisdiction’s land use requirements as they existed when the project was submitted for approval, provided the jurisdiction has adopted a valid housing element.



This law limits the discretion of planning commission and city councils considering affordable housing development proposals. It can be used to inform conscientious decision-makers or to offer a politically acceptable “excuse” to a decision-maker who wants to “do the right thing” but is afraid of political pressure. If a local government disapproves of a project without making any findings or with inadequate findings, the disapproval can be challenged by a lawsuit. The local government has the burden of proof to defend its findings if the disapproval is challenged in court.

### State Anti-Discrimination Law (California Government Code § 65008)

This law prohibits cities from discriminating against any residential development or emergency shelter on the basis of any of the following:

- Method of financing (i.e. use of public subsidies).
- The race, religion, national origin, ancestry, lawful occupation or age of the owners or intended occupants.
- Intended use is by persons or families of low- or moderate-income.

In addition, cities may not impose different requirements on an affordable housing development or shelter which is subsidized, financed, insured or otherwise assisted by federal, state or local public entities.

### Other laws favoring affordable housing

Water and sewer providers must grant preference to lower income developments in allocating service extensions (CA Govt Code § 65589.7).

According to a group of laws commonly called the “six or under” rules, local government are required to treat certain group homes which will house six or fewer residents, including residential care facilities and alcohol and drug abuse recovery or treatment facilities, as if they were family residences and to allow them in any area zoned for residential use (CA Health and Safety Code § 1267.8, § 1566.3 and § 1568.083).

In certain cases, challengers of affordable housing developments who sue to stop a project can be required to post bonds (CA Civil Code of Procedure § 529.2). In all civil lawsuits brought by opponents to affordable housing projects where the lawsuit or the relief sought has the effect of preventing or delaying the project from being carried out, the defendant (usually developer or local government) may seek a court order requiring the opponents to post a bond as a security for costs and any damages that defendant may incur as a result of delays caused by the lawsuit.

# **SUPPLEMENTAL DOCUMENT 8**

## **GENERAL LACDA REQUIREMENTS**

## GENERAL LACDA REQUIREMENTS

The Los Angeles County Development Authority (LACDA) imposes the following reservations and requirements with respect to this NOFA and any applications made hereunder:

1. The LACDA reserves the right to retain all submitted applications, and the applications shall become the property of the LACDA. Any department or agency of the County shall have the right to use any or all ideas presented in applications submitted in response to this NOFA without any change or limitation. Selection or rejection of a proposal does not affect these rights.
2. The LACDA reserves the right to cancel the NOFA or shorten or extend the NOFA submission deadline should such actions be in the best interest of the LACDA. Applicants may revise their applications in the event the deadline is extended.
3. All applications submitted will be subject to a threshold and completeness screening. Applications passing this initial screening will then be subject to further technical review. During this technical review, applications found to be non-responsive to any of the requirements of the NOFA may be rejected at that time. The LACDA reserves the right to reject any or all applications received in answer to this NOFA if they are deemed inappropriate, incomplete, or are not in the best interest of the LACDA.
4. The LACDA reserves the right to withdraw this NOFA at any time without prior notice. Further, the LACDA makes no representation that any contract will be awarded to any applicant responding to this NOFA.
5. **Lobbyist Ordinance Compliance Certification.** Each applicant submitting a response to this NOFA certifies that each County lobbyist, as defined by Los Angeles Code Section 2.160.010, retained by the applicant is in full compliance with Chapter 2.160 or the Los Angeles County Code.
6. **Gratuities.** It is improper for any officer, employee, or agent of the LACDA to solicit consideration, in any form, from an applicant with the implication, suggestion or statement that the application's provision of the consideration may secure more favorable treatment for the propose in the award of the contract or that the application's failure to provide such consideration may negatively affect the LACDA's consideration of the applicant's submission. An applicant shall not offer or give, either directly or through an intermediary, consideration, in any form, to an officer, employee or agent of the LACDA for the purpose of securing favorable treatment with respect to the award of the contract.

An applicant shall immediately report any attempt by an officer, employee, or agent of the LACDA to solicit such improper consideration. The report shall be made either to the LACDA's Executive Director or designee. Failure to report such a solicitation may result in rejection of the application.

Examples of such improper consideration include cash, discounts, services, the provision of travel or entertainment, or tangible gifts.



7. **Request for Taxpayer Identification Number Certification.** The person, firm or corporation selected to enter into a contract with the LACDA shall be required to provide the LACDA with a completed Federal W-9 form, including taxpayer identification number, or social security number, in order to comply with Federal Tax information regulations. If this document is not supplied, the LACDA retains the right to withhold payment on invoices in accordance with IRS Guidelines as outlined in Publication 1281 (Rev. 8-93). The LACDA has the right to withhold payment without being charged late charges or fees.

8. **EEO Certification.** Each applicant submitting a response to this NOFA shall certify and agree that all persons employed by or seeking employment with the applicant, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all federal, State and local anti-discrimination laws. Copies of the firm's current non-discrimination and equal employment policy are required to be submitted with the proposal.

9. **Consideration of GAIN/GROW Participants for Employment.** In compliance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the LACDA seeks to assist recipients of CalWorks benefits to make the transition from welfare to employment. The Greater Avenues for Independence (GAIN) Program and the General Relief Opportunity for Work (GROW) Program, developed by the County Department of Public Social Services (DPSS) provides job skills workshops for GAIN/GROW participants and employment counselors to support and monitor GAIN/GROW participants' progress. The LACDA encourages the utilization of GAIN/GROW participants in the delivery of contracted services.

As a threshold requirement for consideration for selection, applicants shall demonstrate a proven record of hiring GAIN/GROW participants or shall agree to consider GAIN/GROW participants for any future employment opening if they meet the minimum qualifications for that opening. Additionally, applicants shall agree to provide employed GAIN/GROW participants access to the applicants' employee mentoring programs, if available, to assist these individuals in obtaining permanent employment and/or promotional opportunities. Applicants who do not agree to meet this requirement shall not be considered for selection.

10. **Continued Truthfulness of Certifications and Representations.** All representations, certifications, and information provided by Applicant to the LACDA shall have been true when made/delivered, do not omit any material facts, and shall continue to be true and not omit any material facts at all times up to and including the date of any funding award and the closing of such funding award.

11. **No Material Changes.** From the date the application is submitted and at all times up to and including the date of any funding award and the closing of such funding award, no material adverse change shall have occurred with respect to applicant or the project, including but not limited to: the financial condition, working capital, assets, liabilities, management, business, operations, good standing of applicant; the financial feasibility of the project; the physical, environmental and title conditions to the project site; availability and timeliness of government approvals, land use approvals, permits and licenses; appointment of a receiver, foreclosure, general assignment for the benefit of creditors, bankruptcy filing with regard to or affecting all or any of the assets of applicant or its owners; and community support for the project.

12. In the event funds become unavailable due to unforeseeable circumstances and the LACDA, at its sole discretion, terminates its obligations under this NOFA, such an event shall not constitute a “material change” as defined above.

The LACDA also imposes the following requirements on all applicants who receive a funding award under this NOFA:

**13. Contract Requirements**

The initial recommendation for funding should not be construed as a finding that the application complies with all requirements and conditions for a loan. A funding recommendation or offer to contract may be withdrawn upon failure of reasonable attempts to negotiate a Loan Agreement and all documents related thereto, including but not limited to security instruments and collateral assignments, subordination and intercreditor agreements, certifications, title insurance requirements, and surety bonds.

Successful applicants will be required to satisfy the LACDA’s and other participating agency or entity’s insurance requirements. Additionally, all applicants must comply with all contractual requirements.

**14. Child Support Compliance Requirements**

Funding award recipients shall: 1) fully comply with all applicable State and Federal reporting requirements relating to employment reporting for its employees; and 2) comply with all lawfully served Wage and Earnings Assignment Orders and Notice of Assignment and continue to maintain compliance during the term of any Agreement that may be executed pursuant to this solicitation. Failure to comply may be cause for termination of an Agreement or initiation of debarment proceedings against the non-compliant Developer.

**15. Safely Surrendered Baby Law**

Funding award recipients shall notify and provide to their employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purposes.

**16. LACDA’s Insurance Requirements**

The LACDA’s standard insurance requirements are included under separate cover in the NOFA Supplemental Documents.



# **SUPPLEMENTAL DOCUMENT 9**

## **UTILITY ALLOWANCE SCHEDULE**

# LACDA Utility Allowance Schedule

(Effective 07-01-2020)

Los Angeles County		Single Family Unit Size										Multi Family Unit Size										SRO
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR	7 BR	8 BR	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR	7 BR	8 BR	Single Room Occupancy		
Heating	Gas	9	13	17	22	30	36	42	50	57	7	10	13	16	21	24	29	33	37	7		
	Electric	14	21	28	35	47	55	62	70	78	11	15	20	25	34	40	45	51	59	11		
Cooking	Gas	4	6	7	9	11	13	14	16	17	4	6	7	9	11	13	14	16	18	3		
	Electric	6	8	10	13	16	18	21	23	24	6	8	10	13	16	18	21	23	25	4		
Water Heating	Gas	7	9	12	14	19	24	28	32	37	7	9	12	14	19	24	28	32	37	5		
	Electric	11	16	20	24	31	35	40	45	50	11	16	20	24	31	35	40	45	50	8		
Other: Basic Electric		19	23	28	33	38	46	52	59	67	19	23	28	33	38	46	52	59	67	14		
Water		22	29	36	51	65	80	94	108	123	59	66	73	87	102	116	130	144	159	44		
Trash		34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	26		
Air Conditioning		9	13	18	22	30	35	40	45	51	7	10	13	17	22	26	30	34	38	5		
Appliances		Range: 5		Refrigerator: 8																		

ALL ELECTRIC SCHEDULE																						
Los Angeles County		Single Family Unit Size										Multi Family Unit Size										SRO
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR	7 BR	8 BR	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR	7 BR	8 BR	Single Room Occupancy		
Heating	Electric	12	17	23	29	39	46	53	60	68	10	14	18	22	29	34	40	45	51	9		
Cooking	Electric	5	7	9	11	14	16	18	20	22	5	7	9	11	14	16	18	20	22	4		
Water Heating	Electric	10	14	17	21	27	31	35	40	44	10	14	17	21	27	31	35	40	44	7		
Other: Basic Electric		19	23	28	33	39	46	52	59	66	19	23	28	33	39	46	52	59	66	14		
Water		22	29	36	51	65	80	94	109	123	59	66	73	87	102	116	130	144	159	44		
Trash		34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34	26		
Air Conditioning		9	14	18	23	31	36	41	47	52	7	10	14	17	23	27	31	35	38	5		
Appliances		Range: 5		Refrigerator: 8																		

HUD regulations mandate that utility allowance amounts be determined based on the lower of the unit size or family's voucher size for Tenant based voucher participants. For Certificated based participants, the utility allowance is based on the unit size only.

# **SUPPLEMENTAL DOCUMENT 10**

## **SECTION 8 PAYMENT STANDARDS**

**Effective October 1, 2020**  
**HOUSING CHOICE VOUCHER PROGRAM**  
**Payment Standards**

<b>Los Angeles County Development Authority</b>
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<i>Bedroom Size</i>	SRO	0-bdr	1-bdr	2-bdr	3-bdr	4-bdr	5-bdr	6-bdr	7-bdr	8-bdr
<i>Payment Standard</i>	\$924	\$1,232	\$1,522	\$1,852	\$2,462	\$2,684	\$3,086	\$3,489	\$3,892	\$4,294

**Effective October 17, 2018**

**VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM**

**Payment Standards**

**Los Angeles County Development Authority**

Bedroom Size	SRO	0-bdr	1-bdr	2-bdr	3-bdr	4-bdr	5-bdr	6-bdr	7-bdr	8-bdr
Payment Standard	\$1,120	\$1,493	\$1,797	\$2,328	\$3,123	\$3,453	\$3,971	\$4,489	\$5,007	\$5,525

# **SUPPLEMENTAL DOCUMENT 11**

**RENT AND INCOME LIMITS**

**LOS ANGELES COUNTY DEVELOPMENT AUTHORITY****HOME INCOME LIMITS 2020 (effective 07/1/2020)**

	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
20% AMI	\$15,780	\$18,020	\$20,280	\$22,520	\$24,340	\$26,140	\$27,940	\$29,740
30% AMI	\$23,700	\$27,050	\$30,450	\$33,800	\$36,550	\$39,250	\$41,950	\$44,650
35% AMI	\$27,615	\$31,535	\$35,490	\$39,410	\$42,595	\$45,745	\$48,895	\$52,045
40% AMI	\$31,560	\$36,040	\$40,560	\$45,040	\$48,680	\$52,280	\$55,880	\$59,480
45% AMI	\$35,505	\$40,545	\$45,630	\$50,670	\$54,765	\$58,815	\$62,865	\$66,915
Very Low Income (50% AMI)	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350
60% AMI	\$47,340	\$54,060	\$60,840	\$67,560	\$73,020	\$78,420	\$83,820	\$89,220
Low Income (80% AMI)	\$63,100	\$72,100	\$81,100	\$90,100	\$97,350	\$104,550	\$111,750	\$118,950

**HOME RENT LIMITS 2020 (effective 07/1/2020)**

	<b>Occupancy Factor</b>	<b>0-bedroom</b>	<b>1-bedroom</b>	<b>2-bedrooms</b>	<b>3-bedrooms</b>	<b>4-bedrooms</b>	<b>5-bedrooms</b>	<b>6-bedrooms</b>
20% AMI	1.5	\$394	\$422	\$507	\$586	\$653	\$721	\$788
30% AMI	1.5	\$592	\$634	\$760	\$878	\$980	\$1,081	\$1,182
35% AMI	1.5	\$690	\$739	\$887	\$1,025	\$1,143	\$1,261	\$1,379
40% AMI	1.5	\$789	\$845	\$1,014	\$1,171	\$1,306	\$1,442	\$1,576
45% AMI	1.5	\$887	\$950	\$1,140	\$1,318	\$1,470	\$1,622	\$1,773
LOW HOME	1.5	\$986	\$1,056	\$1,267	\$1,464	\$1,633	\$1,802	\$1,970
60% AMI	1.5	\$1,183	\$1,267	\$1,520	\$1,757	\$1,960	\$2,162	\$2,364
HIGH HOME	1.5	\$1,261	\$1,353	\$1,626	\$1,870	\$2,066	\$2,261	\$2,456

\* Must subtract utility allowance from listed rent amount to get actual amount to charge tenant.

## LOS ANGELES COUNTY DEVELOPMENT AUTHORITY

### COUNTY GENERAL INCOME LIMITS 2020 (effective 04/1/2020)

*This chart is for projects Placed in Service on or after 04/1/2020, all projects placed in service prior to 04/1/2020 refer to TCAC website for rent and income limits that correspond with project's placed in service.*

	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
20% AMI	\$15,780	\$18,020	\$20,280	\$22,520	\$24,340	\$26,140	\$27,940	\$29,740
30% AMI	\$23,670	\$27,030	\$30,420	\$33,780	\$36,510	\$39,210	\$41,910	\$44,610
35% AMI	\$27,615	\$31,535	\$35,490	\$39,410	\$42,595	\$45,745	\$48,895	\$52,045
40% AMI	\$31,560	\$36,040	\$40,560	\$45,040	\$48,680	\$52,280	\$55,880	\$59,480
45% AMI	\$35,505	\$40,545	\$45,630	\$50,670	\$54,765	\$58,815	\$62,865	\$66,915
50% AMI	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350
60% AMI	\$47,340	\$54,060	\$60,840	\$67,560	\$73,020	\$78,420	\$83,820	\$89,220
80% AMI	\$63,120	\$72,080	\$81,120	\$90,080	\$97,360	\$104,560	\$111,760	\$118,960

### COUNTY GENERAL RENT LIMITS 2020 (effective 04/1/2020)

	Occupancy Factor	0-bedroom	1-bedroom	2-bedrooms	3-bedrooms	4-bedrooms	5-bedrooms
20% AMI	1.5	\$394	\$422	\$507	\$585	\$653	\$721
30% AMI	1.5	\$591	\$633	\$760	\$878	\$980	\$1,081
35% AMI	1.5	\$690	\$739	\$887	\$1,025	\$1,143	\$1,261
40% AMI	1.5	\$789	\$845	\$1,014	\$1,171	\$1,307	\$1,442
45% AMI	1.5	\$887	\$950	\$1,140	\$1,317	\$1,470	\$1,622
50% AMI	1.5	\$986	\$1,056	\$1,267	\$1,464	\$1,633	\$1,802
60% AMI	1.5	\$1,183	\$1,267	\$1,521	\$1,757	\$1,960	\$2,163
80% AMI	1.5	\$1,578	\$1,690	\$2,028	\$2,343	\$2,614	\$2,884

\* Must subtract utility allowance from listed rent amount to get actual amount to charge tenant.



**LOS ANGELES COUNTY DEVELOPMENT AUTHORITY****CITY OF INDUSTRY INCOME LIMITS 2020 (effective 04/30/2020)**

	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
30% AMI	\$23,700	\$27,050	\$30,450	\$33,800	\$36,550	\$39,250	\$41,950	\$44,650
35% AMI	\$27,615	\$31,535	\$35,490	\$39,410	\$42,595	\$45,745	\$48,895	\$52,045
40% AMI	\$31,560	\$36,040	\$40,560	\$45,040	\$48,680	\$52,280	\$55,880	\$59,480
45% AMI	\$35,505	\$40,545	\$45,630	\$50,670	\$54,765	\$58,815	\$62,865	\$66,915
50% AMI	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350

**CITY OF INDUSTRY RENT LIMITS 2020 (effective 04/30/2020)**

	<b>Occupancy Factor</b>	<b>0-bedroom</b>	<b>1-bedroom</b>	<b>2-bedrooms</b>	<b>3-bedrooms</b>	<b>4-bedrooms</b>	<b>5-bedrooms</b>	<b>6-bedrooms</b>
30% AMI	1 + 1	\$406	\$464	\$522	\$580	\$626	\$673	\$719
35% AMI	1 + 1	\$473	\$541	\$609	\$676	\$730	\$785	\$839
40% AMI	1 + 1	\$541	\$618	\$696	\$773	\$835	\$897	\$959
45% AMI	1 + 1	\$609	\$696	\$783	\$870	\$939	\$1,009	\$1,078
50% AMI	1 + 1	\$676	\$773	\$870	\$966	\$1,044	\$1,121	\$1,198

\* Must subtract utility allowance from listed rent amount to get actual amount to charge tenant.

**LOS ANGELES COUNTY DEVELOPMENT AUTHORITY****CITY OF INDUSTRY HOMEOWNERSHIP INCOME LIMITS 2020 (effective 04/30/2020)**

	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
50% AMI	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350
70% AMI	\$55,230	\$63,070	\$70,980	\$78,820	\$85,190	\$91,490	\$97,790	\$104,090
80% AMI	\$63,100	\$72,100	\$81,100	\$90,100	\$97,350	\$104,550	\$111,750	\$118,950
100% AMI (HCD Median)	\$54,100	\$61,850	\$69,550	\$77,300	\$83,500	\$89,650	\$95,850	\$102,050
110% AMI	\$59,500	\$68,025	\$76,525	\$85,025	\$91,825	\$98,625	\$105,425	\$112,250
120% AMI	\$64,900	\$74,200	\$83,500	\$92,750	\$100,150	\$107,600	\$115,000	\$122,450

**CITY OF INDUSTRY HOMEOWNERSHIP MONTHLY HOUSING COST LIMITS 2020 (effective 04/30/2020)**

	<b>Occupancy Factor</b>	<b>Housing Cost Factor</b>	<b>1-bedroom</b>	<b>2-bedrooms</b>	<b>3-bedrooms</b>	<b>4-bedrooms</b>
50% - 70% AMI	1 + 1	30%	\$1,082	\$1,217	\$1,353	\$1,461
70% - 80% AMI	1 + 1	30%	Between 28% & 35% of actual income			
80% - 110% AMI	1 + 1	35%	Not less than 28% of actual income AND not more than:			
			\$1,984	\$2,232	\$2,480	\$2,678

**LOS ANGELES COUNTY DEVELOPMENT AUTHORITY**

**DENSITY BONUS - MARINA DEL REY INCOME LIMITS 2020 (effective 04/30/2020)**

	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
30% AMI	\$23,700	\$27,050	\$30,450	\$33,800	\$36,550	\$39,250	\$41,950	\$44,650
35% AMI	\$27,615	\$31,535	\$35,490	\$39,410	\$42,595	\$45,745	\$48,895	\$52,045
40% AMI	\$31,560	\$36,040	\$40,560	\$45,040	\$48,680	\$52,280	\$55,880	\$59,480
45% AMI	\$35,505	\$40,545	\$45,630	\$50,670	\$54,765	\$58,815	\$62,865	\$66,915
50% AMI	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350
60% AMI	\$47,340	\$54,060	\$60,840	\$67,560	\$73,020	\$78,420	\$83,820	\$89,220
70% AMI	\$55,230	\$63,070	\$70,980	\$78,820	\$85,190	\$91,490	\$97,790	\$104,090
80% AMI	\$63,100	\$72,100	\$81,100	\$90,100	\$97,350	\$104,550	\$111,750	\$118,950
<b>100% AMI (HCD Median)</b>	<b>\$54,100</b>	<b>\$61,850</b>	<b>\$69,550</b>	<b>\$77,300</b>	<b>\$83,500</b>	<b>\$89,650</b>	<b>\$95,850</b>	<b>\$102,050</b>
<b>120% AMI (HCD Moderate)</b>	<b>\$64,900</b>	<b>\$74,200</b>	<b>\$83,500</b>	<b>\$92,750</b>	<b>\$100,150</b>	<b>\$107,600</b>	<b>\$115,000</b>	<b>\$122,450</b>

**DENSITY BONUS - MARINA DEL REY RENT LIMITS 2020 (effective 04/30/2020)**

	<b>Occupancy Factor</b>	<b>0-bedroom</b>	<b>1-bedroom</b>	<b>2-bedrooms</b>	<b>3-bedrooms</b>	<b>4-bedrooms</b>	<b>5-bedrooms</b>	<b>6-bedrooms</b>
50% AMI	1 + 1	\$676	\$773	\$870	\$966	\$1,044	\$1,121	\$1,198
80% AMI	1 + 1	\$812	\$928	\$1,044	\$1,160	\$1,252	\$1,345	\$1,438
120% AMI	1 + 1	\$1,488	\$1,701	\$1,913	\$2,126	\$2,296	\$2,466	\$2,636

*\* Must subtract utility allowance from listed rent amount to get actual amount to charge tenant.*

**LOS ANGELES COUNTY DEVELOPMENT AUTHORITY****BONDS INCOME LIMITS 2020 (effective 07/1/2020)**

	<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
50% AMI	\$39,450	\$45,050	\$50,700	\$56,300	\$60,850	\$65,350	\$69,850	\$74,350
80% AMI	\$63,100	\$72,100	\$81,100	\$90,100	\$97,350	\$104,550	\$111,750	\$118,950

**BONDS RENT LIMITS 2020 (effective 07/1/2020)**

	<b>Occupancy Factor</b>	<b>0-bedroom</b>	<b>1-bedroom</b>	<b>2-bedrooms</b>	<b>3-bedrooms</b>	<b>4-bedrooms</b>	<b>5-bedrooms</b>	<b>6-bedrooms</b>
BOND 50% AMI	1 + 1	\$986	\$1,126	\$1,268	\$1,408	\$1,521	\$1,634	\$1,746
BOND 80% AMI	1 + 1	\$1,578	\$1,803	\$2,028	\$2,253	\$2,434	\$2,614	\$2,794

\* *Projects after 1999: Must subtract utility allowance from listed rent amount to get actual amount to charge tenant.*

\*\* *Project before 1999: Actual rent charged to tenant - No utility allowance adjustment made unless project specifically requires it.*

# **SUPPLEMENTAL DOCUMENT 12**

**LACDA INSURANCE REQUIREMENTS**



## LOS ANGELES COUNTY DEVELOPMENT AUTHORITY INSURANCE REQUIREMENTS

### EXHIBIT A INSURANCE REQUIREMENTS NOFA 26

#### 1.0 INSURANCE

Without limiting the Borrower's indemnification of LACDA Indemnitees, and in the performance of this Agreement and until all its obligations pursuant to this Agreement have been met, Borrower shall provide and maintain at its own expense insurance coverage satisfying the requirements specified herein. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon the Borrower pursuant to this Agreement. The LACDA in no way warrants that the Required Insurance is sufficient to protect the Borrower for liabilities which may arise from or relate to this Agreement.

#### SUB-CONTRACTOR INSURANCE COVERAGE REQUIREMENTS

The Borrower shall include their Contractors and all their Sub-Contractors as insureds under the Contractor's own policies or shall provide the LACDA with each Sub-Contractor's separate evidence of insurance coverage upon request. The Borrower shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein and shall require that each Sub-Contractor name the LACDA, the County of Los Angeles and the Borrower as additional insureds on a primary and non-contributory basis and include a waiver of subrogation on the Sub-Contractor's General Liability policy. Borrower shall obtain the LACDA's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

#### 1.1 Insurance Coverage

All Insurance Coverage requirements listed below are to be provided upon the execution of the Agreement between the Borrower and the LACDA, unless specified to be provided during the pre-development period where indicated below.

#### BORROWER INSURANCE REQUIREMENTS:

A

**GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required.

**Note:** If applicable, insurance provided by the Developer on behalf of the Borrower, the Developer shall add Borrower as a named insured on the insurance policy. The Developer entity providing insurance must be the one that formed the Borrower.

**COMMERCIAL PROPERTY:** For receipt of an LACDA loan, the Borrower shall be required to insure the property for replacement cost under the Special Form Coverage. The LACDA shall be named on a Lenders Loss Payable Endorsement. Evidence of this shall be provided to the LACDA, prior to execution of this Agreement. Coverage shall be maintained for the duration of this Agreement.

Borrower shall at all times during the term of the loan, maintain property/casualty insurance on all business assets and collateral in an amount at least equal to the borrower's outstanding loans, and name the LACDA as a lender loss payee, additional insured and include coverage for all items purchased with the loan. Borrower shall keep collateral properly housed and insured for the full insurable value thereof against loss or damage by fire, theft, explosion, sprinklers, collision (in the case of motor vehicles) and such other risks satisfactory to the LACDA.

"Basic Form" or "Special Form" property insurance as follows:

B

- A. "Special Form" perils property insurance coverage shall be provided for both Builders Risk (course of construction) and completed operational property. All builders risk insurance shall provide coverage against theft, vandalism, malicious mischief, collapse, false work, temporary buildings on site, theft and vandalism to construction materials, building materials in transit and debris removal including demolition occasioned by enforcement of any applicable building codes. The amount of the property coverage shall at all times meet or exceed the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the Mortgaged Property. There shall not be a "co-insurance" clause and Borrower agrees to waive any co-insurance clause **to the full extent described in the insurance policy form**. If a co-insurance waiver is not commercially available at reasonable rates, the LACDA may waive this requirement. Said insurance shall be maintained for the duration of this Agreement. The LACDA shall be named as loss payees on such policy.
- B. If "Special Form" is not available from Borrower's underwriters due to market conditions or unreasonable costs, or the LACDA determine "Basic Form" is preferred, "Basic Form" may be obtained in lieu of "Special Form." "Basic Form" insurance coverage shall include, without limitation, insurance against the perils of fire and physical loss of damage including, without duplication of coverage, vandalism, malicious mischief and extended coverage. The amount of the property coverage shall at all times meet or exceed the actual cash value ("ACV") of all existing structures, improvements and fixtures on the Property. Said insurance shall be maintained for the duration of this Agreement. The LACDA shall be named as loss payees on such policy.

Borrower shall deliver satisfactory evidence of Property insurance at such time that such exposures are at risk, but in no event later than the Close of Construction Escrow.

- BUILDERS RISK INSURANCE:** For receipt of an LACDA loan, the Borrower shall be required to insure the property for replacement cost under the Special Form Coverage. The LACDA shall be named on a Lenders Loss Payable Endorsement.
- C** (All Risk with Replacement Cost Coverage Form) shall be maintained by the Borrower upon the entire part of the structure on which the work of the contract is to be done in one hundred (100%) percent of the insurable value of the Agreement amount thereof, including items of labor and materials connected therewith. This insurance shall include the interests of the LACDA, Borrower, subcontractors, and sub-subcontractors, and shall insure against the perils of fire and extended coverage, and shall include "all risk" insurance for physical damage, including, but not limited to, windstorm, hailstorm, tornado, theft, vandalism, and malicious mischief and course of construction coverage. The property insurance shall include the fees of an architect necessary to be incurred in repairs or reconstruction of the Work. The LACDA shall be named as Loss Payee.

- D** **FLOOD INSURANCE (If Applicable, Borrower to provide evidence property is not located in a flood zone):** Flood Insurance shall be maintained for any project located in a Special Flood Hazard Area. The flood insurance shall provide coverage in an amount that at all times meets or exceeds the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the Property, or the maximum limit available through the National Flood Insurance Program ("NFIP"), whichever is greater.

#### DEVELOPER INSURANCE REQUIREMENTS:

- A** **GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required.

**Note:** If applicable, insurance provided by the Borrower on behalf of the Developer, the Borrower shall add Developer as a named insured on the insurance policy. The Borrower must have been the one formed by the Developer.

- B** **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY:** as required by the Labor Code of the State of California. Must include a waiver of subrogation in favor of the LACDA. In all cases, insurance shall include Employer's Liability coverage with limits of not less than indicated.

- C** **PROFESSIONAL REAL ESTATE LIABILITY INSURANCE:** Insurance provided by the Developer hired by the Borrower to cover Borrower's liability arising from this Agreement in an amount not less than indicated by the LACDA. Said insurance shall



be maintained for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

**DESIGN PROFESSIONALS:** Including but not limited to architects, CASp consultants, structural, civil & geotechnical engineers hired directly by the Borrower or Developer.

If any work is performed during the pre-development period where LACDA owns the property, the following insurances will be applicable to the consultant performing the work.

**A GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required.

**B COMMERCIAL AUTOMOBILE INSURANCE:** Shall include coverage of all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto". Shall include a waiver of subrogation in favor of the LACDA.

**C WORKERS' COMPENSATION:** as required by the Labor Code of the State of California. Must include a waiver of subrogation in favor of the LACDA. In all cases, insurance shall include Employer's Liability coverage with limits of not less than indicated.

**D PROFESSIONAL LIABILITY INSURANCE:** Appropriate to the professional's profession in an amount not less than LACDA requirements. Said insurance shall be maintained for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

**POLLUTION LIABILITY INSURANCE (APPLICABLE TO PROFESSIONALS PERFORMING WORK AT THE SITE):** And/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed including coverage for bodily injury, personal injury, death, property damages, and environmental damage. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. (See Exhibit A-1 for Additional Information)

**E** Said policy shall also include, but not be limited to coverage for any and all remediation costs, including, but not limited to, brownfield restoration and clean-up costs, and coverage for the removal, repair, handling, and disposal of asbestos and/or lead containing materials where applicable. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. If the general liability insurance policy and/or the pollution liability insurance policy is written on a claims-made form, then said policy or policies shall also comply with all the following requirements:

- a. The retroactive date must be shown on the policy and must be before the date of this Agreement or the beginning of the work or services that are the subject of this Agreement;
- b. Insurance must be maintained, and evidence of insurance must be provided for the duration of this Agreement or for five (5) years after completion of the work or services that are the subject of this Agreement, whichever is greater;
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, then the Borrower must purchase an extended period coverage for a minimum of five (5) years after completion of work or services that are the subject of this Agreement;
- d. A copy of the claims reporting requirements must be submitted to the LACDA for review; and

If the work or services that are the subject of this Agreement involve lead based paint or asbestos identification/remediation, then the Borrower's Pollution Liability shall not contain any lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Borrower's Pollution Liability shall not contain a mold exclusion and definition of "Pollution" shall include microbial matter including mold.

**ENVIRONMENTAL TESTING:** Applicable to any consultants performing environmental work or testing at the site.

If any work is performed during the pre-development period where LACDA owns the property the following insurances will be applicable to the consultant performing the work.

**A**

**GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required. When digging or trenching shall occur, coverage shall include an XCU Endorsement for explosion, collapse, and underground ("XCU") hazards, property damage liability.

**B**

**COMMERCIAL AUTOMOBILE INSURANCE:** Shall include coverage of all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto". Shall include a waiver of subrogation in favor of the LACDA.

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos as well as proof of MCS 90.

C

**WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY:** as required by the Labor Code of the State of California. Must include a waiver of subrogation in favor of the LACDA. In all cases, insurance shall include Employer's Liability coverage with limits of not less than indicated.

D

**PROFESSIONAL LIABILITY INSURANCE:** Appropriate to the professional's profession in an amount not less than LACDA requirements. Said insurance shall be maintained for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

E

**POLLUTION LIABILITY INSURANCE:** And/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed including coverage for bodily injury, personal injury, death, property damages, and environmental damage. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. (See Exhibit A-1 for Additional Information)

Said policy shall also include, but not be limited to coverage for any and all remediation costs, including, but not limited to, brownfield restoration and clean-up costs, and coverage for the removal, repair, handling, and disposal of asbestos and/or lead containing materials where applicable. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. If the general liability insurance policy and/or the pollution liability insurance policy is written on a claims-made form, then said policy or policies shall also comply with all the following requirements:

- a. The retroactive date must be shown on the policy and must be before the date of this Agreement or the beginning of the work or services that are the subject of this Agreement;
- b. Insurance must be maintained, and evidence of insurance must be provided for the duration of this Agreement or for five (5) years after completion of the work or services that are the subject of this Agreement, whichever is greater;
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, then the Borrower must purchase an extended period coverage for a minimum of five (5) years after completion of work or services that are the subject of this Agreement;
- d. A copy of the claims reporting requirements must be submitted to the LACDA for review; and

If the work or services that are the subject of this Agreement involve lead based paint or asbestos identification/remediation, then the Borrower's Pollution Liability shall not contain any lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Borrower's Pollution Liability shall not contain a mold exclusion and definition of "Pollution" shall include microbial matter including mold.

## CONSTRUCTION CONTRACTOR(S):

**A**

**GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required. Coverage shall include an XCU Endorsement for explosion, collapse, and underground ("XCU") hazards, property damage liability.

**B**

**COMMERCIAL AUTOMOBILE INSURANCE:** Shall include coverage of all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto", pollution liability broadened coverage for covered autos and a waiver of subrogation.

If automobiles are to be used for transporting hazardous materials, coverage shall include an MCS-90 policy endorsement for public liability under Section 29 and 30 of the Motor Carrier Act of 1980.

**C**

**WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY:** as required by the Labor Code of the State of California. Must include a waiver of subrogation in favor of the LACDA. In all cases, insurance shall include Employer's Liability coverage with limits of not less than indicated.

**D**

**POLLUTION LIABILITY INSURANCE:** And/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed including coverage for bodily injury, personal injury, death, property damages, and environmental damage. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. (See Exhibit A-1 for Additional Information)

Said policy shall also include, but not be limited to coverage for any and all remediation costs, including, but not limited to, brownfield restoration and clean-up costs, and coverage for the removal, repair, handling, and disposal of asbestos and/or lead containing materials where applicable. The LACDA and the County shall be covered as additional insureds on the pollution liability insurance policy. If the general liability insurance policy and/or the pollution liability insurance policy is written on a claims-made form, then said policy or policies shall also comply with all of the following requirements:

- a. The retroactive date must be shown on the policy and must be before the date of this Agreement or the beginning of the work or services that are the subject of this Agreement;
- b. Insurance must be maintained and evidence of insurance must be provided for the duration of this Agreement or for five (5) years after completion of the work or services that are the subject of this Agreement, whichever is greater;

- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, then the Borrower must purchase an extended period coverage for a minimum of five (5) years after completion of work or services that are the subject of this Agreement;
- d. A copy of the claims reporting requirements must be submitted to the LACDA for review; and

If the work or services that are the subject of this Agreement involve lead based paint or asbestos identification/remediation, then the Borrower's Pollution Liability shall not contain any lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Borrower's Pollution Liability shall not contain a mold exclusion and definition of "Pollution" shall include microbial matter including mold.

**BONDING:** Insurance and bonding procedures shall be conducted in full compliance with Federal standards as stated in 24 CFR 85.36, all state and county laws and procedures, other Governmental Restrictions. The bonding coverage shall include a Performance Bond and Payment Bond, for construction or facility improvement contracts exceeding \$100,000. Payment and Performance Bonds should name the LACDA as additional obligee.

**E**

Construction Contractor shall provide two surety bonds with goods and sufficient sureties as follows: (1) a Payment Bond in the sum of not less than 100% of the Construction Contract price to assure payment of claims; (2) a Performance Bond in the sum of not less than 100% of the Construction Contract price to assure faithful performance of the Construction Contract.

All bonds required under this provision shall include as obligees the LACDA, the Borrower, any lenders, and any additional obligee(s) that may be identified in a rider to the bond documents (individually referred to as "**Obligee**" and collectively, the "**Obligees**").

#### ALTA SURVEY:

**A**

**ALTA SURVEY:** Should be certified to the Los Angeles County Development Authority and its successors and/or assigns.

**If Applicable**

**PRE-DEVELOPMENT INSURANCE REQUIREMENTS:** If Borrower obtains a right of entry from the LACDA for a LACDA owned property.

**A** **GENERAL LIABILITY:** (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the LACDA, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively "LACDA and its Agents"). Additional Insured Endorsement with primary and non-contributory coverage and a waiver of subrogation naming the LACDA and the County is required.

**B** **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY:** as required by the Labor Code of the State of California. Must include a waiver of subrogation in favor of the LACDA. In all cases, insurance shall include Employer's Liability coverage with limits of not less than indicated.

**C** **PROFESSIONAL REAL ESTATE LIABILITY INSURANCE:** Insurance provided by the Developer hired by the Borrower to cover Borrower's liability arising from this Agreement in an amount not less than indicated by the LACDA. Said insurance shall be maintained for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

**EVIDENCE OF COMMERCIAL PROPERTY (obtain if Borrower or Developer owns adjacent parcels to the LACDA owned parcels that will be part of the total project site):** For receipt of an LACDA loan, the Borrower shall be required to insure the property for replacement cost under the Special Form Coverage. The LACDA shall be named on a Lenders Loss Payable Endorsement. Evidence of this shall be provided to the LACDA, prior to execution of this Agreement. Coverage shall be maintained for the duration of this Agreement.

**D** Borrower shall at all times during the term of the loan, maintain property/casualty insurance on all business assets and collateral in an amount at least equal to the borrower's outstanding loans, and name the LACDA as a lender loss payee, additional insured and include coverage for all items purchased with the loan. Borrower shall keep collateral properly housed and insured for the full insurable value thereof against loss or damage by fire, theft, explosion, sprinklers, collision (in the case of motor vehicles) and such other risks satisfactory to the LACDA.

"Basic Form" or "Special Form" property insurance as follows:

- A. "Special Form" perils property insurance coverage shall be provided for both Builders Risk (course of construction) and completed operational property. All builders risk insurance shall provide coverage against theft, vandalism, malicious mischief, collapse, false work, temporary buildings on site, theft and vandalism to construction materials, building materials in transit and debris removal including demolition occasioned by enforcement of any applicable

building codes. The amount of the property coverage shall at all times meet or exceed the full replacement value of materials supplied or installed by others and all existing structures, improvements and fixtures on the Mortgaged Property. There shall not be a "co-insurance" clause and Borrower agrees to waive any co-insurance clause **to the full extent described in the insurance policy form**. If a co-insurance waiver is not commercially available at reasonable rates, the LACDA may waive this requirement. Said insurance shall be maintained for the duration of this Agreement. The LACDA shall be named as loss payees on such policy.

- B. If "Special Form" is not available from Borrower's underwriters due to market conditions or unreasonable costs, or the LACDA determine "Basic Form" is preferred, "Basic Form" may be obtained in lieu of "Special Form." "Basic Form" insurance coverage shall include, without limitation, insurance against the perils of fire and physical loss of damage including, without duplication of coverage, vandalism, malicious mischief and extended coverage. The amount of the property coverage shall at all times meet or exceed the actual cash value ("ACV") of all existing structures, improvements and fixtures on the Property. Said insurance shall be maintained for the duration of this Agreement. The LACDA shall be named as loss payees on such policy.

Borrower shall deliver satisfactory evidence of Property insurance at such time that such exposures are at risk, but in no event later than the Close of Construction Escrow.

## **EXHIBIT A- 1 – ADDITIONAL INSURANCE INFORMATION**

### **1.2 Certificate of Insurance Coverage:**

- 1.2.1 Certificate(s) of Insurance Coverage ("Certificate") satisfactory to the LACDA, and a copy of an Additional Insured endorsement confirming the LACDA and the County has been given Insured status under the Borrower's General Liability policy, shall be delivered to the LACDA at the address shown below and provided prior to commencing services under this Agreement.
- 1.2.2 Renewal Certificates shall be provided to the LACDA not less than ten (10) days prior to Borrower's policy expiration dates. The LACDA reserves the right to obtain complete, certified copies of any required Borrower and/or Sub-Contractor insurance policies at any time.
- 1.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Borrower identified as the contracting party in this Agreement. All certificates of insurance and endorsements shall carry the following identifier:

**Project Name**  
**Project Address**

- 1.2.4 Certificates shall provide the full name of each insurer providing coverage, its National Association of Insurance Commissioners ("NAIC") identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any LACDA required endorsement forms.
- 1.2.5 Neither the LACDA's failure to obtain, nor the LACDA's receipt of, or failure to object to a non-complying Certificate or endorsement, or any other insurance documentation or information provided by the Borrower, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.
- 1.2.6 Certificates and copies of any required endorsements shall be sent to:

Los Angeles County Development Authority  
Attn: Housing Investment & Finance  
700 W. Main Street, Alhambra, CA 91801



### **1.3 Notices of Injury or Damage or Destruction**

Borrower also shall promptly report to the LACDA any injury or property damage accident or incident, including any injury to a Borrower employee occurring on the LACDA property, and any loss, disappearance, destruction, misuse, or theft of the LACDA property, monies or securities entrusted to Borrower. Borrower also shall promptly notify the LACDA of any third-party claim or suit filed against Borrower or any of its sub-contractors which arises from or relates to this Agreement and could result in the filing of a claim or lawsuit against Borrower and/or the LACDA.

### **1.4 Additional Insured Status and Scope of Coverage**

The LACDA and the County of Los Angeles shall be provided additional insured status under Borrower's General Liability policy with respect to liability arising out of Borrower's ongoing and completed operations performed on behalf of the LACDA. The LACDA and the County additional insured status shall apply with respect to liability and defense of suits arising out of the Borrower's acts or omissions, whether such liability is attributable to the Borrower or to the LACDA. The full policy limits and scope of protection also shall apply to the LACDA and the County as an additional insured, even if they exceed the LACDA's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable provided it satisfies the Required Insurance provisions herein.

### **1.5 Cancellation of or Change to Maintain Insurance**

Borrower shall provide the LACDA with, or Borrower's insurance policies shall contain a provision that the LACDA shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to the LACDA at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the LACDA, upon which the LACDA may suspend or terminate this Agreement.

### **1.6 Failure to Maintain Insurance**

Borrower's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which the LACDA immediately may withhold payments due to Borrower, and/or suspend or terminate this Agreement. The LACDA, at its sole discretion, may obtain damages from Borrower resulting from said breach. Alternatively, the LACDA may purchase the Required Insurance, and without further notice to Borrower, deduct the premium cost from sums due to Borrower or pursue Borrower reimbursement.

## **1.7 Borrowers' Insurance Shall Be Primary**

Borrower's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Borrower. Any LACDA maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Borrower coverage.

## **1.8 Insurance Specifics**

### **1.8.1 Waivers of Subrogation**

To the fullest extent permitted by law, the Borrower hereby waives its rights and its insurer(s)' rights of recovery against the LACDA under all the Required Insurance for any loss arising from or relating to this Agreement. The Borrower shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

### **1.8.2 Sub-Contractor Insurance Coverage Requirements**

Borrower shall include all Sub-Contractors as insureds under Borrower's own policies, or shall provide the LACDA with each Sub-Contractor's separate evidence of insurance coverage upon request. Borrower shall be responsible for verifying each Sub- Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the LACDA and Borrower as additional insureds on the Sub-Contractor's General Liability policy. Borrower shall obtain the LACDA's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

### **1.8.3 Deductibles and Self-Insured Retentions (SIRs)**

Borrower's policies shall not obligate the LACDA to pay any portion of any Borrower deductible or SIR. The LACDA retains the right to require Borrower to reduce or eliminate policy deductibles and SIRs as respects the LACDA, or to provide a bond guaranteeing Borrower's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

### **1.8.4 Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Borrower understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

### **1.8.5 Application of Excess Liability Coverage**

Borrower may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the

underlying primary policies, to satisfy the Required Insurance provisions.

**1.8.6 Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

**1.8.7 Alternative Risk Financing Programs**

The LACDA reserves the right to review, and then approve, Borrower use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The LACDA shall be designated as an Additional Covered Party under any approved program.

**1.9 LACDA Review and Approval of Insurance Requirements**

The LACDA reserves the right to review and adjust the Required Insurance provisions, conditioned upon the LACDA's determination of changes in risk exposures.

EXHIBIT A-2 - INSURANCE MATRIX NOFA LOAN PROGRAM

Category	Workers Compensation	Commercial General Liability in Combination with Excess (Umbrella Liability)				Professional Liability	Property Insurance	Builders' Risk & Course of Construction Coverage	Flood Insurance	Commercial Auto Liability	Pollution / Environmental Liability	Bonding
		General Aggregate	Products/Completed/OnGoing Operations Agg	Personal & Adv Injury	Each Occurrence	Each Occurrence				Combined Single Limit		
<b>Pre-Development</b> • LP, LLC, Corporation	Coverage required in every contract, with limits as specified by law					< \$25M = \$2,000,000 > \$25M = \$5,000,000	Total Value of Property	Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply
		\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000							
<b>Borrower</b> • LP, LLC	Does Not Apply (if no employees)					Does Not Apply	Total Value of Property/ Project	Total Value of Property/ Project	Greater of Total Value of Property/Project or NFIP (if Property is Located in Flood Zone)	Does Not Apply	Does Not Apply	Does Not Apply
		\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000							
<b>Developer</b> <i>Contract/Project Value</i> < \$10M > \$10M - \$50M > \$50M	Coverage required in every contract, with limits as specified by law					< \$25M = \$2,000,000 > \$25M = \$5,000,000	Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply
		\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000							
		\$5,000,000	\$5,000,000	\$2,000,000	\$2,000,000							
		\$10,000,000	\$10,000,000	\$5,000,000	\$5,000,000							
<b>Design Professional</b> • Architectural • Engineering • CASp		\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000	< \$25M = \$2,000,000 > \$25M = \$5,000,000	Does Not Apply	Does Not Apply	Does Not Apply	\$1,000,000	\$2,000,000 (if work is performed at the site)	Does Not Apply
<b>Testing/Reporting &amp; General Services</b> • Enviro, Air, Surveys, Materials • Hazardous Waste Removal • Rubbish/Garbage Removal • Landscape/Lawn Care • Tree Removal		< \$5M - \$10M = \$2,000,000	< \$5M - \$10M = \$2,000,000	< \$5M - \$10M = \$2,000,000	< \$5M - \$10M = \$2,000,000	\$2,000,000	Does Not Apply	Does Not Apply	Does Not Apply	\$1,000,000	< \$10M - \$5M = \$2,000,000 \$10M - \$50M = \$5,000,000 > \$50M = \$10,000,000	Does Not Apply
		\$10M - \$50M = \$5,000,000	\$10M - \$50M = \$5,000,000	\$10M - \$50M = \$5,000,000	\$10M - \$50M = \$5,000,000							
		> \$50M = \$10,000,000	> \$50M = \$10,000,000	> \$50M = \$10,000,000	> \$50M = \$10,000,000							
<b>General Contractors (including demolition)</b> <i>Contract/Project Value</i> < \$10M > \$10M - \$50M > \$50M						Does Not Apply	Does Not Apply	Does Not Apply	Does Not Apply	\$1,000,000		Total Value of Contract (if project value > \$100K)
		\$2,000,000	\$2,000,000	\$1,000,000	\$1,000,000						\$2,000,000	
		\$5,000,000	\$5,000,000	\$2,000,000	\$2,000,000						\$5,000,000	
		\$10,000,000	\$10,000,000	\$5,000,000	\$5,000,000						\$10,000,000	

# **SUPPLEMENTAL DOCUMENT 13**

## **LOCAL AND TARGETED WORKER HIRING REPORTING**

## EXHIBIT “W” TO LOAN AGREEMENT

### **LOCAL AND TARGETED WORKER HIRING PROGRAM REQUIREMENTS**

(COUNTY GENERAL FUND - PROJECT NO. \_\_\_\_\_)

All projects must utilize best efforts to achieve the Local Resident hire goal of 30 percent of total California construction labor hours and a Targeted Worker hire goal of 10 percent of total California construction labor hours. Hours worked by a Targeted Worker who is also a Local Resident may be applied towards the 30 percent Local Resident hire goal.

The Contractor shall ensure posting a wide array of its construction job advertisements and/or seeking the assistance of a community service provider organization, if necessary, to ensure the best efforts hiring requirement provided for Local Workers is met in accordance with this Policy.

Exceptions for projects in jurisdictions enforcing their own local hiring policy, and for projects with federal or State funding prohibitions on geographic preferences will be determined on a case-by-case basis by Chief Executive Office (CEO), in consultation with the County Board of Supervisors Offices and County Counsel, and the exemption shall be stated in the corresponding Board letter.

Affordable housing projects financed with federal funds subject to 24 CFR Part 135 will follow local hiring and training guidelines promulgated through Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain Housing and Urban Development (HUD) financial assistance can be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

#### **LOCAL RESIDENT**

Local Resident hiring uses a two-tiered preference system.

A ***Tier 1 Qualified Local Resident*** is defined as a County resident whose primary residency is:

- (1) within five (5) miles of the proposed project site; and
- (2) is within a qualifying Zip Code (see definition below). If a qualifying Zip Code is partially located within the 5-mile radius, then the entire Zip Code is considered as Tier I Zip Code, and workers living in that entire Zip Code area may qualify as Tier I hire.

A ***Tier 2 Qualified Local Resident*** is defined as a County resident whose primary residency is:

- (1) within a qualifying Zip code; and
- (2) that qualifying Zip Code is beyond five (5) miles of the proposed project site.

A ***qualifying Zip Code*** is defined as a Zip Code within the County of Los Angeles, where either:

- (1) the average percentage of households living below 200 percent of the Federal Poverty Level (FPL) for that individual's primary residency's Zip Code is greater than the County average for such households; or
- (2) the Zip Code is one of 11 additional Zip Codes determined by the Board on September 6, 2011 to be a Zip Code where at least 30 percent of the population is living in poverty, and with an unemployment rate of at least 150 percent of the national average.

A Local Resident is defined as an individual living within the Tier 1 or Tier 2 ZIP Codes of Los Angeles County. Before employing worker(s) from Tier 2 ZIP Codes, the available pool of local residents whose primary place of residence is within Tier 1 ZIP Codes must first be exhausted.

### **TARGETED WORKER**

A *Targeted Worker* is an individual who is both a County resident and who faces one or more of the following barriers to employment:

1. Has a documented annual income at or below 100 percent of the Federal Poverty Level;
2. Has no high school diploma or GED;
3. Has a history of involvement with the criminal justice system;
4. Is experiencing protracted unemployment (receiving unemployment benefits for at least 6 months);
5. Is a current recipient of government cash or food assistance benefits;
6. Is homeless or has been homeless within the last year;
7. Is a custodial single parent;
8. Is a former foster youth;
9. Is a veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C.421 5[a]);
10. Is an eligible migrant and seasonal farmworker;
11. Is currently an English language learner;
12. Is an older Individual (55+);
13. Is disabled; or
14. Is an individual with a low level of literacy.

### **PROGRAM REQUIREMENTS**

From time to time, the Local and Targeted Worker Hiring Program may be updated or amended by the Los Angeles County Board of Supervisors and/or Chief Executive Office. Projects are expected to adhere to the Local and Targeted Worker Hiring Program in effect at the time of permitting. Reporting on progress with meeting program requirements will be made monthly and will be a prerequisite to receipt of approval of funds during each construction draw and permanent loan conversion.

The lead developer is required to facilitate the Local and Targeted Worker Hiring Program and must provide evidence of outreach to Local Residents and Targeted Workers and report on hiring activities monthly (sample form provided below). The LACDA will condition the approval of construction draws and release of funds at conversion to permanent financing on the submission of monthly reports.

To demonstrate best efforts at achieving the designated hiring goals, the project's lead developer shall provide evidence of outreach efforts that shall include but not be limited to:

- Advertising the project information and Local Resident and Targeted Worker hiring goals, job fairs, and job opportunities via two separate notices in community newspapers prior to the start of construction;
- Conducting outreach to organizations or programs such as:
  - Local Workforce Investment Board and job centers;
  - Area chamber(s) of commerce;
  - Any local community colleges, trade and technical schools, and other employment training programs;
  - Labor organizations if union labor is used; and
  - The local jurisdiction's social services department.
- Conducting at least two job fairs at or near the job site;
- To the extent available, using the lead developer's and general contractor social media outlets and website to advertise the Local and Targeted Worker hiring aspects of the project;
- The following resources may be used to connect contractors to workers meeting the definition of a Local Worker or a Target Worker, should the contractor require assistance. Additional Community Service Providers may be used by contractors and subcontractors to identify local residents and Targeted Workers.
  1. Los Angeles County Workforce Development, Aging, and Community Services: <https://wdacs.lacounty.gov/>
  2. LA Jobs: <https://www.jobsla.org/vosnetlDefault.aspx>
  3. Cal Jobs: <http://www.caliobs.ca.gov/vosnetlDefault.aspx>
  4. Helmets to Hardhats: <https://www.helmetstohardhats.org>
  5. America's Job Center of California: <http://www.americasjobcenter.ca.gov>

As a result of the above outreach, project teams shall develop a list of qualified Local Residents and Targeted Workers and shall draw from this list to the greatest extent possible for job openings that occur throughout the life of the project.

The Local and Targeted Worker Hiring Program does not require the project to hire personnel that are not qualified for available job openings, but instead seeks to provide job opportunities to Local and Targeted Workers to the greatest extent possible.

## **INSTRUCTIONS**

1. Email the LACDA project manager assigned to your project to request a list of qualifying zip codes within 5 miles of the site and qualifying zip codes within Los Angeles County. Include the project's address within the email.
2. Obtain the Excel worksheet from LACDA project manager used to report Local and Targeted Worker Hires.
3. Submit a monthly Local and Targeted Worker Hire report to the LACDA project manager.
4. Within first 6 months of the project submit evidence of compliance with best efforts to LACDA project manager.



PROJECT NAME: \_\_\_\_\_

CUMULATIVE LOCAL & TARGETED WORKER HIRE INFORMATION	
Total Forecast Project Hours:	50,000
Total Project Hours Completed to Date:	10000
Project Hours This Period	2500
Total Project Hours Completed by Local Residents (Tier 1):	704
Total Project Hours Completed by Local Residents (Tier 1) & Targeted Workers:	1408
Total Project Hours Completed by Local Residents (Tier 2):	1408
Total Project Hours Completed by Local Residents (Tier 2) & Targeted Workers:	704
Total Project Hours Completed by Targeted Workers:	704
Total Project Hours Completed by Local Residents (Tier 1 & 2) + Targeted Workers:	4928
Total Number of Workers Who Are New Hires:	3
Total Number of All Workers at Project:	15

Period From	1/1/2020
Period To	1/31/2020

	Number of Workers This Period	Hours This Period	Percentage of Hours Worked This Period	Number of Workers Who Are New Hires This Period	Number of Workers Who Were Existing Employees*
<b>LOCAL RESIDENTS - TIER 1</b>					
Workers residing within zip codes 5 Miles of the project AND a Qualifying Zip Code	1	176	7%	0	0
<b>LOCAL RESIDENTS TIER 1 &amp; TARGETED WORKERS</b>					
Workers meet the Local Resident Tier 1 description above AND any of the Targeted Worker categories listed below	2	352	14%	0	0
<b>TARGETED WORKER CATEGORIES</b>					
Income at or below 100% of Federal Poverty Level	1	176	7%	0	0
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth					
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a])	1	176	7%	0	0
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					
<b>LOCAL RESIDENTS - TIER 2</b>					
Workers residing in a Qualifying zip code beyond 5 miles from project	2	352	14%	0	0
<b>LOCAL RESIDENTS TIER 2 &amp; TARGETED WORKERS</b>					
Workers meet the Local Resident Tier 2 description above AND any of the Targeted Worker categories listed below	1	176	7%	0	0
<b>TARGETED WORKER CATEGORIES</b>					
Income at or below 100% of Federal Poverty Level					
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth	1	176	7%	0	0
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a])					
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					
<b>TARGETED WORKERS</b>					
Workers meet any of the Targeted Worker categories listed below	1	176	7%	0	0
<b>TARGETED WORKER CATEGORIES</b>					
Income at or below 100% of Federal Poverty Level	1	176	7%	0	0
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth					
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a])					
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					

\* Existing employees are employees who were employed by the company prior to the contract award by the project.

Note: Tier 1 and Tier 2 ZIP Codes will be provided by LACDA upon request of the developer.

PROJECT NAME:

CUMULATIVE LOCAL & TARGETED WORKER HIRE INFORMATION	
Total Forecast Project Hours:	50,000
Total Project Hours Completed to Date:	10000
Project Hours This Period	2500
Total Project Hours Completed by Local Residents (Tier 1):	704
Total Project Hours Completed by Local Residents (Tier 1) & Targeted Workers:	1408
Total Project Hours Completed by Local Residents (Tier 2):	1408
Total Project Hours Completed by Local Residents (Tier 2) & Targeted Workers:	704
Total Project Hours Completed by Targeted Workers:	704
Total Project Hours Completed by Local Residents (Tier 1 & 2) + Targeted Workers:	4928
Total Number of Workers Who Are New Hires:	3
Total Number of All Workers at Project:	15

Period From	1/1/2020
Period To	1/31/2020

	Number of Workers This Period	Hours This Period	Percentage of Hours Worked This Period	Number of Workers Who Are New Hires This Period	Number of Workers Who Were Existing Employees*
LOCAL RESIDENTS - TIER 1					
Workers residing within zip codes 5 Miles of the project AND a Qualifying Zip Code	1	176	7%	0	0
LOCAL RESIDENTS TIER 1 & TARGETED WORKERS					
Workers meet the Local Resident Tier 1 description above AND any of the Targeted Worker categories listed below	2	352	14%	0	0
TARGETED WORKER CATEGORIES					
Income at or below 100% of Federal Poverty Level	1	176	7%	0	0
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth					
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a])	1	176	7%	0	0
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					
LOCAL RESIDENTS - TIER 2					
Workers residing in a Qualifying zip code beyond 5 miles from project	2	352	14%	0	0
LOCAL RESIDENTS TIER 2 & TARGETED WORKERS					
Workers meet the Local Resident Tier 2 description above AND any of the Targeted Worker categories listed below	1	176	7%	0	0
TARGETED WORKER CATEGORIES					
Income at or below 100% of Federal Poverty Level					
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth	1	176	7%	0	0
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a])					
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					
TARGETED WORKERS					
Workers meet any of the Targeted Worker categories listed below	1	176	7%	0	0
TARGETED WORKER CATEGORIES					
Income at or below 100% of Federal Poverty Level	1	176	7%	0	0
No high school diploma or GED					
A history of involvement with the criminal justice system					
Protracted unemployment					
Current recipient of government cash or food assistance benefits					
Homeless or has been homeless within the last year					
Custodial single parent					
Former foster youth					
Veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C. 4215[a]).					
Is an eligible migrant and seasonal farmworker					
Is currently an English language learner					
Is an older Individual (55+)					
Is disabled					
Is an individual with a low level of literacy					

\* Existing employees are employees who were employed by the company prior to the contract award by the project.  
Note: Tier 1 and Tier 2 ZIP Codes will be provided by LACDA upon request of the developer.

**Purpose:** To report the projects monthly and cumulative Local and Targeted Worker Hire Policy (LTWHP) information  
1) Name the workbook: *Project Name \_LTWHP* (Example: ABC Project\_LTWHP). Use the same workbook throughout the project.

**Instructions:**  
2) Create a new *Project Name\_Month (Example: ABC Project\_January)* worksheet each month.  
3) Report all local hire and targeted worker outreach on the Good Faith Efforts tab provided

**Form Notes:**  
Calculate hours on this form for each Local Resident Hire and/or Targeted Worker employee for the reporting period. The employee  
1) Tier 1 Worker  
2) Tier 1 & Targeted Worker  
3) Tier 2 Worker  
4) Tier 2 & Targeted Worker  
5) Targeted Worker

Do not input information in cells highlighted in gray. These cells will auto-calculate the sum of information fo

**PROJECT NAME:**

Contact Date/Time	Contact Person	Organization	Mode of Contact	Contact Info.	Results of Contact
Example: 10/16/2016	Example: Jane Smith, Director	Example: Workforce Investment Board	Example: Phone Call	Example: Phone number, email	Jane Smith was contacted to determine if any construction workers were available to work on the project. Ms. Smith sent a list of potentially eligible employees, which has been forwarded to the General Contractor for consideration and distribution to the project subs.

# **SUPPLEMENTAL DOCUMENT 14**

**ENVIRONMENTAL SERVICE REQUEST (ESR) FORM**

LOS ANGELES COUNTY DEVELOPMENT AUTHORITY ENVIRONMENTAL SERVICE REQUEST (ESR) FORM  
INSTRUCTIONS: Please Read Carefully

- An Environmental Service Request (ESR) must be completed for projects that request or use federal funds administered by the Los Angeles County Development Authority (LACDA), including Section 8 project-based rental assistance.
- Answer each applicable question for Part 1 and Part 2 or confirm that the question is not applicable by answering “N/A”.
- The ESR form must be submitted with the NOFA Application.
- Without proper environmental clearance from the LACDA, funds or rental assistance may be disallowed or delayed.
- For questions, consult the NOFA Point of Contact.

NOTE: Sponsors of projects that received environmental clearance from the LACDA, but then have substantial changes to the project description, must immediately contact the LACDA staff to determine if an updated review and clearance is required before any work can proceed.

Date Submitted: \_\_\_\_\_ Staff Only: Date Received by ESU: \_\_\_\_\_  
Date By Which Environmental Clearance is Required and For What Purpose: \_\_\_\_\_

Part 1

Contact Information

1. Name of Participating City, Agency, or LACDA Division: NOFA - Housing Investment and Finance (HIF) Division
2. Project Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_
3. Project Name: \_\_\_\_\_ Project Number: \_\_\_\_\_

Property/Project Detail

4. Based on the type of project, provide the following:
- a. Buildings: Enter the Street Address: \_\_\_\_\_ Number of units: \_\_\_\_\_
- b. Infrastructure projects: East/west/north/south street boundaries: \_\_\_\_\_
5. For the construction of new buildings, what percentage of the units will be dedicated to low-/moderate-income residents? \_\_\_\_\_
6. Project Scope of Work: Provide details of all proposed work activities at the site(s) above. Attach additional sheets, if necessary.

7. Supervisorial District: \_\_\_\_\_ Census Tract(s): \_\_\_\_\_
8. Has this site or project previously received previous funds from LACDA? No ☐ Yes ☐ If yes, what source(s) of funds and the date(s) awarded? \_\_\_\_\_
9. Is this project connected to another LACDA project? No ☐ Yes ☐ If yes, list project number(s): \_\_\_\_\_
10. Is the activity a part of a multi-phased project where a) related activities or b) additional project areas, were either previously cleared or will be included in the project scope in the future? No ☐ Yes ☐
- If yes, is there an approved planning document showing the areas of improvement and boundaries of each phase? No ☐ Yes ☐

Proposed Budget

11. Name of Funding Type (CDBG, AHTE, etc.)	Fiscal Year	Funding Source (District, City, etc.)	Funding Amount
i. _____	_____	_____	\$ _____
ii. _____	_____	_____	\$ _____
iii. _____	_____	_____	\$ _____
iv. _____	_____	_____	\$ _____
Total Project Cost:			\$ _____

12. Describe all Energy Efficiency, Water Conservation, and Green Building measures to be implemented with this project (including third-party Certifications, ENERGY STAR-rated products, etc.). Attach work specifications or product information, if available.
- \_\_\_\_\_
- \_\_\_\_\_
14. Identify any agencies, groups, or members of the public known to be interested in the project: \_\_\_\_\_
- \_\_\_\_\_

LOS ANGELE COUNTY DEVELOPMENT AUTHORITY  
ENVIRONMENTAL SERVICE REQUEST (ESR) FORM

Part 2

- Include a Parcel Map, Site Map, Work Specifications Sheet, Site Pictures, Site Plans and Elevations, or other supporting documentation, as applicable.
- Each question must be completed. If a question does not apply, enter “N/A” (not applicable) or use checkbox “No”.

Property and Area Information

15. Assessor’s Parcel Number (APN): Lot size (sq.ft.):
16. Age of structure(s): *If 50 years old or older, clear pictures of the building exterior and style must be submitted.*
17. Is this property (or any area in the vicinity) known to have Historic Preservation value? Yes No Unknown  
If yes, provide documentation or explanation of Historic Preservation Status:
18. Will there be a change to the exterior characteristics or architectural style of the building? Yes No
19. Name of property owner(s): For Disposition, name of proposed new owner(s):
20. Current zoning designation: If there is a proposed zone change, to what designation?
21. Current use of property or site: Will there be a change in use as a result of this project? Yes No  
If yes, provide description of new use:

Activity Detail

22. If new construction, how many structures? (Include maps and/or specifications showing location and square footage):  
a. Are off-site improvements proposed? Yes No If yes, describe what type and the exact location:
23. Does this project include demolition? Yes No If yes, provide details: (Please identify on map):
24. For projects with grading/trenching/excavation activities, indicate the depth of excavation in feet and total square footage of the work area and applicable details:
25. For projects that include underground installation of utilities or services (sewer/water line, storm drain, etc.), will any soil or earth be excavated or disturbed that was previously undisturbed? Yes No If yes, please describe:
26. Will there be a change in size of the building, facility, site, or pipeline? Yes No  
If yes, state the original square feet or linear feet: Proposed new size: Percentage increase:
27. Will the project create a change in capacity? Yes No If yes, please describe:

Additional/Concurrent Reviews

28. Have any other CEQA or NEPA environmental reviews been completed, or are in progress, for this project? Yes No  
If yes, attach documentation and identify the review (Categorical Exclusion, Initial Study, etc.):
29. Was a Phase I Environmental Site Assessment completed for the site(s)? Yes No In Progress
30. Have any of the following been completed at the site?  
a. Asbestos survey Yes No In Progress  
b. Lead-based paint survey Yes No In Progress  
c. Has any abatement been performed at the site? Yes No In Progress

Trees and Birds

31. Will any trees be removed or disturbed (including the tree root systems) because of the project? Yes No  
a. If yes, describe the number of trees and impacts:  
b. Are any of the trees a species of oak? Yes No  
c. Is an arborist report available for review or currently underway for this project? Yes No  
d. Will the removal/disturbance of trees occur during the bird nesting season (January 15 – September 15)? Yes No  
If ‘yes’, a Biological Survey must be completed and submitted to ESU for review prior to start of work.

Energy Efficiency, Water Conservation, and Green Building Measures

32. a. Does this project meet the requirements of the Los Angeles County Green Building Ordinances? Yes No N/A  
b. Does this project meet the California Green Building Standards Code (24 CCR Part 11)? Yes No N/A  
c. Does this project comply with California’s Model Water Efficient Landscape Ordinance? Yes No N/A
33. Describe any other measures to reduce Greenhouse Gas emissions, energy consumption, or water use caused by this project:

**LOS ANGELE COUNTY DEVELOPMENT AUTHORITY  
ENVIRONMENTAL SERVICE REQUEST (ESR) FORM**

**For Projects on LACDA-Owned Land**

**34.** Did the LACDA previously acquire the property?    Yes ☐    No ☐    Date of Purchase:\_\_\_\_\_    Project Number:\_\_\_\_\_

**35.** Provide any associated Project Number(s) and Project Name(s): \_\_\_\_\_

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# **SUPPLEMENTAL DOCUMENT 15**

**NO PLACE LIKE HOME PROGRAM REQUIREMENTS**



# **NO PLACE LIKE HOME PROGRAM GUIDELINES**

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## ATTACHMENTS

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Attachment 1	Waiver to Exceed 49% NPLH Units
Attachment 2	NPLH Reporting Requirements

## PURPOSE

The purpose of this document is to identify No Place Like Home (NPLH) program funding requirements that build upon and are additional to the requirements and regulations for more general Special Needs populations. Projects seeking financing from the NPLH program are required to adhere to the requirements of both the more general NOFA for Affordable Multifamily Rental Housing and these NPLH requirements.

## PROGRAM OVERVIEW

In 2004, California voters approved Proposition 63, also known as the Mental Health Services Act (MHSA). MHSA provides funding for various county mental health services by increasing the income tax paid by those with incomes above \$1 million. This income tax increase raises \$1.5 billion to \$2.5 billion per year.

On July 1, 2016, Governor Brown signed Assembly Bill 1618, which authorized the creation of the NPLH Program. The NPLH Program authorizes issuance of \$2 billion in bond proceeds to be repaid with MHSA funds for the development of supportive housing for those experiencing homelessness, chronic homelessness, or at-risk of chronic homelessness and living with mental illness. On November 6, 2018, California voters approved Proposition 2, also known as the No Place Like Home Act of 2018, which allows the state to carry out the NPLH Program utilizing MHSA funds.

The primary component of the \$2 billion in the NPLH Fund is an allocation of \$1.8 billion to be distributed through either a Competitive Program or an Alternative Process, whereby a county may elect to administer its own allocation. Los Angeles County (County) has been designated an Alternative Process County, and as such, is responsible for program implementation, including the selection of projects, underwriting, holding the promissory notes and deeds of trust, and long-term monitoring. The LACDA has been designated as an agent of the County in the implementation of the NPLH Program for selection, project financing and monitoring in conjunction with the Los Angeles County Department of Mental Health (DMH). DMH has been designated to provide supportive services to the tenants in the NPLH-funded units for at least 20 years, monitor the provision of services, and approve eligible tenants. The NPLH Program is regulated by the State of California Department of Housing and Community Development (HCD).

One of the LACDA's goals is to support the creation of permanent Special Needs housing throughout Los Angeles County. This NPLH NOFA funds the creation of housing units for the Target Population, as defined in this NOFA and identified in Welfare and Institutions Code Section 5600.3 (a) and (b) (adults or older adults with a Serious Mental Disorder or Seriously Emotionally Disturbed Children or Adolescents), who are Homeless, Chronically Homeless, or At-Risk of Chronic Homelessness. This includes persons with co-occurring mental and physical disabilities or co-occurring mental and substance use disorders.

The NPLH Program requires the use of low-barrier tenant selection practices that prioritize vulnerable populations and offer flexible, voluntary, and individualized

supportive services. DMH will provide supportive service delivery to NPLH-assisted units, with referrals coming through the County's Coordinated Entry System (CES) for the homeless and chronically homeless populations and a similar system for the at-risk of chronic homelessness population.

Funded projects are expected to help meet the housing needs of their communities, provide local economic development opportunities during construction, and assist in the alleviation of any local blighting conditions.

## **1 ELIGIBILITY**

### **1.1 GENERAL INFORMATION**

NPLH funding is based on Target Population and geography. Only Assisted Units to be occupied by the Target Population and located wholly within Los Angeles County are eligible for funding.

### **1.2 ELIGIBLE POPULATIONS**

#### **1.2.1 NPLH TARGET POPULATION**

The NPLH target populations (NPLH Target Populations) refer to households with at least one person who qualifies as a member of one of the target populations identified in Welfare and Institutions Code Section 5600.3 (a) adults or older adults with a Serious Mental Disorder, or (b) Seriously Emotionally Disturbed Children or Adolescents, who are:

- Homeless,
- Chronically Homeless, or
- At-Risk of Chronic Homelessness.

Target Populations include persons with a mental illness who may have co-occurring physical disabilities or co-occurring substance use disorders.

In no event shall the qualifying household member be required to be a client of the County's behavioral health department or a recipient of mental health or other services in order to qualify for, or remain in, a NPLH-assisted unit.

#### **1.2.2 AFFORDABILITY**

Assisted units must be restricted to households earning at or below 30% of Area Median Income (AMI).

#### **1.2.3 REFERRALS**

Referrals for NPLH-assisted units must occur through a standardized process. Qualifying Chronically Homeless and Homeless applicants must be matched to assisted units via Los Angeles County's Coordinated Entry System (CES), in coordination with DMH. Given that the CES does not currently have the capacity to assess and identify those who qualify as At-Risk of Chronic Homelessness, as this is a new category/definition used for NPLH projects, the most vulnerable at-risk households will be identified, matched and referred to assisted units through a process to be developed by the County. DMH will oversee the prioritization of at-risk households for assisted units.

## **1.3 ELIGIBLE PROJECTS**

### **1.3.1 ELIGIBLE PROJECT TYPE**

Projects eligible to receive capital and project-based rental assistance from NPLH Program funds include permanent supportive multifamily rental housing units for the Target Population. Projects may propose to use tax credit financing, but such financing is not a requirement of the NOFA. All project types must meet eligibility criteria identified in the NOFA.

The LACDA and DMH must approve the number of units set aside for the Target Population.

### **1.3.2 ELIGIBLE PROJECT REQUIREMENTS**

In addition to the requirements included in the requirements and regulations for the general Special Needs populations, NPLH projects also must meet the following requirements:

- Proposed projects must demonstrate integration of the Target Population with the other tenant populations.
  - Assisted Units must be integrated with other Units in the Project and not separated onto separate floors or areas of the building;
  - Applicants must facilitate or provide regular community-building activities and architectural design features that promote tenant interaction, (for example, indoor and outdoor community space within the project, wide hallways), as feasible depending on the scope of the construction or rehabilitation activity; and
  - The service plan and property management plan must document policies that promote participation by tenants in community activities and impose no restrictions on tenants that are not otherwise required by other project funding sources or would not be common in other unsubsidized rental housing in the community.

## **1.4 STACKING OF NPLH SUBSIDY WITH OTHER SOURCES**

NPLH Program funds cannot be used to finance the same units (“stacked”) that are also assisted with Mental Health Services Act (MHSA) funds or LACDA Mental Health Housing Program (MHHP) funds. In addition to these sources, NPLH funds cannot be stacked with other funding sources administered by HCD.

For purposes of this section and except as noted below, “HCD Funding Sources” shall mean loan or grant funds awarded for permanent funding of development costs under the following programs, which shall not include funds specifically designated for capitalized operating reserves or rental assistance:

- Supportive Housing Multifamily Housing Program;
- Veterans Housing and Homelessness Prevention Program;
- Multifamily Housing Program;
- Affordable Housing and Sustainable Communities Program Affordable Housing Development loan, except for grants for infrastructure, transportation-related amenities, and program costs;

- NPLH funds provided to a project by either HCD or an Alternative Process County;
- Transit Oriented Development Program rental housing development loan, except for grants for infrastructure;
- Joe Serna, Jr. Farmworker Housing Grant Program;
- SB 2 Farmworker Housing Program;
- Housing for a Healthy California Program, including funds awarded either by the Department or a County; and
- National Housing Trust Fund Program.

## **1.5 APPROVAL OF NPLH UNITS IN EACH PROJECT**

LACDA and DMH are working in partnership to provide permanent supportive housing opportunities and supportive services for residents with a serious mental illness who are chronically homeless, homeless, or at-risk of being chronically homeless. According to the NPLH Guidelines, no more than 49% of the units in a development may be reserved for the Target Population without a waiver from DMH and the LACDA. Additionally, DMH and the LACDA, in their sole discretion, may limit the number of NPLH-assisted units in a development, as well as any mix of NPLH units with non-assisted units.

The LACDA and DMH retain authority to disallow the mix of units in a project, or to limit the number of NPLH-assisted units in a project.

Applicants seeking a waiver to allocate more than 49% of the total project units for the Target Population, must submit such a request to: Reina Turner, Division Chief, Housing Policy and Development, County of Los Angeles Department of Mental Health at: [rturner@dmh.lacounty.gov](mailto:rturner@dmh.lacounty.gov). Attachment 1 to this document is provided as an example of the waiver request. The waiver request form to be used for submission is provided in the NOFA Application for Funding workbook. The request must be submitted by the date indicated in the NOFA Timeline.

In deciding whether to grant the waiver, the LACDA and DMH will consider the applicant's experience developing and operating permanent supportive housing for homeless individuals with a serious mental illness. Specifically, the applicant (developer or managing general partner) is asked to provide the following information regarding their occupied developments targeting homeless individuals with a serious mental illness in their current portfolio:

- Identify the management structure of the ownership entity including the name of the partnership, members of the partnership with the title of each member, and list the role and responsibilities of each member;
- List of all current occupied developments targeting homeless individuals with a serious mental illness;
- The total number of units in each development and of those, the number and percentage of units targeting homeless individuals with a serious mental illness;
- Average retention rate of the units that target homeless individuals with a serious mental illness and the retention rate for the non-targeted units for the requested time periods;

- The amount of turnover in units that target homeless individuals with a serious mental illness and the number of turnover in units for the non-targeted units for the requested time periods;
- The name of the property management company(ies) associated with each development since its occupancy date and justification for changing the property management company, if applicable;
- The number of onsite property managers associated with each development, the number of turnovers in onsite property managers and justification for turnover of property managers, if applicable; and
- Applicant's experience in providing onsite supportive services to homeless individuals with a serious mental illness in each development, if any.

In addition, please respond to the following questions:

- Specific the documentation that would be available for review to verify that the developments listed above target individuals with a serious mental illness.
- How have you implemented Housing First in your tenant selection process? Include at least three examples in response.
- How have you used the tenets of the Permanent Supportive Housing Model and Housing First in addressing lease violations? Include at least three examples in response.

DMH and/or the LACDA may request additional or clarifying information before notifying the applicant of any decision. If a development does not target individuals with a mental illness, please do not include it on the list. Final decisions will be issued before the application period expires.

For the purposes of this NOFA, the retention rate is calculated as the number of occupied units divided by the number of available units as of the last day of each month, i.e. If there are 20 units targeting individuals with a serious mental illness and 15 of those units are occupied on the last day of the month of September, the retention rate for September would be 75%. Calculate the retention rate for each month and average the retention rate for the year. The retention rate for the non-targeted units will be calculated in the same manner.

DMH and/or the LACDA may request additional or clarifying information before notifying the applicant of any decision. Final decisions will be issued before the application period expires.

The LACDA and DMH retain sole discretion in the approval of the mix of units in a project and/or or the number of NPLH-assisted units in a project.

## 2 LOAN TERMS AND NPLH RESERVES

NPLH funds will be made available as loans under the following terms:

- **Interest rate:** 0% simple annual
- **Term:** 55 - 57 years

- **Repayment:** Payments (residual receipts or otherwise) are not collected. In lieu of payments, the applicant will establish eligible NPLH reserves (discussed in more detail in the NOFA Underwriting Guidelines).
- **Collateral:** Deed of Trust secured by the land, or leasehold interest and improvements.

## 2.1 TRANSITION RESERVE

Projects shall have a transition reserve in the event that any project-based rental assistance is not renewed, or in the event that any operating subsidy is exhausted and the project cannot secure sufficient new rental or operating subsidies to continue without immediately raising rents on assisted units. The transition reserve shall be in an amount sufficient to prevent rent increases for residents of assisted units for a period of one year. The transition reserve may be capitalized or funded from annual project cash flow in amounts to be approved by the LACDA. Use of funds in the reserve shall be subject to the review and approval of the LACDA.

If Rent increases on the assisted units are necessary after exhausting all transition reserve funds, such increases shall only be permitted to the minimum extent required for financial feasibility, as determined by the LACDA. In addition, rents on assisted units shall not, in any event, be increased to an amount in excess of 30% of 50% percent of AMI, adjusted by number of bedrooms.

If rent increases on the assisted units are necessary due to loss of rental or operating assistance and if it is determined that NPLH tenants will need to move after exhausting all transition reserve funds, a transition plan shall be implemented to identify other permanent housing options that may be more affordable to NPLH tenants who cannot afford the increased rent, and to assist those persons in accessing other available housing. Funds from the transition reserve may be used for these expenses.

## 2.2 FLEXIBLE OPERATING RESERVE

As noted in the general NOFA regulations, in lieu of payments on the NPLH funds, a Flexible Operating Reserve will be established. The Flexible Operating Reserve will be funded as a priority payment from cash flow before the payment of residual receipts. The amount funded on an annual basis will be based on a percentage of net cash flow after operating expenses, debt service, partnership management fees and deferred developer fees are deducted. The percentage of net cash flow is sized to the hypothetical pro-rata residual receipts distribution that would be due to the LACDA, if residual receipts were being disbursed for the NPLH Loan.

The Flexible Operating Reserve shall be used for shortfalls in operations, supportive services, furnishings, or replacement reserves associated with the NPLH-Assisted Units.



### 3 DEVELOPMENT TEAM

In addition to the experience requirements noted in the general NOFA regulations, NPLH applicant team members must demonstrate experience with NPLH Target Populations, as defined in this NOFA. The applicant team members that are required to have this additional experience are outlined below:

#### 3.1 PROPERTY MANAGEMENT EXPERIENCE

- Points will be awarded based on the experience of the Property Management Company with affordable rent-restricted projects that include the NPLH Target Population, as follows:
  - 2-3 Special Needs projects managed over 3 years = 30 points
  - 4 or more Special Needs projects managed over 3 years = 45 points
- To qualify for points, a project must dedicate at least 10% of its units to a special needs population, with the restriction reflected in a recorded regulatory agreement.
- To qualify for points, at least one (1) of the projects must serve persons who qualify as members of the proposed NPLH Target Population as opposed to another special needs population with similar needs.

TABLE 4.2 - DEVELOPMENT TEAM EXPERIENCE	
No. of Projects	Available Points
Property Management – Special Needs	
2-3	30
4+	45
Lead Service Provider	
1-2	15
3-4	30
5+	45

\*Or 1 LACDA-funded affordable multifamily rental project

### 4 SUPPORTIVE SERVICES PLAN

DMH will coordinate the provision of supportive services to NPLH-assisted units. The County of Los Angeles, through Measure H, will provide for supportive services to residents of supportive housing units that are set aside for homeless individuals and families. Projects are not required to outline supportive service plans for NPLH units.

Supportive service provision to the balance of the project's units must be detailed in a Supportive Service Plan. The Tenant Selection Plan must include the use of low-barrier tenant selection practices that prioritize vulnerable populations and offer flexible, voluntary, and individualized supportive services.

All applicants must prepare a Supportive Services Plan that is appropriate for the project's residents who are not served by the NPLH program and who are not homeless. Supportive services for NPLH and other homeless residents are covered by the County of Los Angeles, through its Full Service Partnership/Integrated Case Management Services contractors; therefore, a Supportive Services Plan for these residents is not

needed. Projects must address the supportive service needs of all other tenants in the project. For Supportive Services Plan requirements for non-NPLH-assisted units, see Supplemental Document 6.

The Supportive Services Plan will not be scored but will be evaluated for completeness and inclusion of required elements and quality. At this phase, projects may receive a Final Conditions List that will detail areas in the Supportive Services Plan that must be revised prior to the release of any loan funds. To guarantee the fulfillment of the required Supportive Services Criteria, the LACDA may withhold loan funds until all identified conditions are addressed to the reasonable satisfaction of staff.

The Supportive Services Plan review consists of these components:

- Supportive Services Narrative
- Supportive Services Budget
- Property Management Plan

DMH will coordinate supportive services for all NPLH-assisted units through its network of contracted Full Service Partnership providers. The supportive services narrative and budget may indicate that DMH will provide supportive services to assisted units but must also identify all services to be provided to non-NPLH-assisted units in the project.

#### **4.1 SUPPORTIVE SERVICES NARRATIVE**

For non-NPLH units, the supportive services narrative must include:

- Need for Services
- Resident Selection
- Services Provision
- Policies and Procedures
- Staffing
- Resident Engagement and Participation
- Outcomes

Supporting documents for the Supportive Services Narrative are:

- Supportive Services Delivery Chart
- Supportive Services Staffing Chart

#### **4.2 SUPPORTIVE SERVICES BUDGET**

The proposed budget must demonstrate that the level of funding is adequate for the services to be provided and the staffing pattern and levels to be used. The Supportive Services Budget must show project operating revenue as a source if a Supportive Services expense is included in the operating budget. The overall financial feasibility of the services budget will be considered regardless of the sources of funding. The Budget section consists of:

- Supportive Services Staffing Chart
- Supportive Services Budget
- Supportive Services Commitments

Formal agreements or commitment letters must be signed and include:

- A description of the services to be provided
- The location where the services will be provided
- The days and hours during which services will be provided (if not known, the approximate number of hours that services will be provided)
- The duration of the agreement

The Los Angeles County Health Agency – the Departments of Health Services, Mental Health and Public Health – will fund Intensive Case Management Services (ICMS) for the Target Population and persons in units reserved for homeless individuals and families. Project budgets and cash flow statements should reflect this commitment of funds.

#### **4.3 SUPPORTIVE SERVICE COSTS**

The cost of case managers and service coordinators included in the Supportive Services Plan may be paid from operating revenue to the extent financially feasible. The LACDA, in its sole discretion, will determine the reasonableness of these costs, considering the proposed staffing levels. The cost of direct service provision may not be funded from capital financing sources. As previously stated, it is expected that the DMH will fund mental health services, Intensive Case Management Services, and substance use services for NPLH-assisted units.

B. 15 Request to DMH to Exceed 49% of Total Units.

REQUEST TO EXCEED 49% OF TOTAL UNITS - ATTACHMENT 1 Submit Request to: Reina Turner, Division Chief, Housing Policy and Development County of Los Angeles Department of Mental Health At the below email address <a href="mailto:rturner@dmh.lacounty.gov">rturner@dmh.lacounty.gov</a>										
APPLICANT INFORMATION										
Applicant/Partnership Name			Total Units in Development	Requested Number of NPLH Assisted Units	Percentage of Total Units	Indicate the management structure of the partnership				
Proposed Development Name						Name of the partnership				
Address						Name and title of each partner				
Contact Name						Specific roles and responsibilities of each member of the partnership				
Contact Phone Number										

DEVELOPING AND OPERATING HISTORY OF CURRENT PERMANENT SUPPORTIVE HOUSING - List the developments in the housing portfolio of the Managing General Partner that currently target individuals with serious mental illness																	
Certificate of Completion Date	Development Name	Address	Number of Units			Housing Retention*		Number of Turnovers		Current Property Management Company	Indicate the number of times the development changed property management companies	Current Onsite Property Manager	How often has the onsite Property Manager changed with the Property Management Company?	Indicate the rationale for changing the property management company or any turnover with the onsite property manager, if applicable	Current onsite service providers	Indicate the type of services provided onsite	Time period that services were rendered
			Individual with serious mental illness	Total Units	Percentage of mental illness	January - December 2018	January - December 2019	January - December 2018	January - December 2019								
						Target	Non-Target	Target	Non-Target								

\* For the purposes of this NOFA, the retention rate is calculated as the number of occupied units divided by the number of available units as of the last day of each month, i.e. If there are 20 units targeting individuals with a serious mental illness and 15 of those units are occupied on the last day of the month of September, the retention rate for September would be 75%. Calculate the retention rate for each month and average the retention rate for the year. The retention rate for the non-targeted units will be calculated in the same manner.

Comments: If desired, please provide any comments to further clarify any chart entry.
Specific the documentation that would be available for review to verify that the developments listed above target individuals with a serious mental illness.
How have you implemented Housing First in your tenant selection process? Include at least three examples in response.
How have you used the tenets of the Permanent Supportive Housing Model and Housing First in addressing lease violations? Include at least three examples in response.

# **Attachment 2**

*Reporting Requirements for the NPLH Program*

This Reporting Requirements Exhibit delineates the standards required by the Los Angeles County Development Authority (LACDA), the County of Los Angeles Department of Mental Health (DMH), and the California Housing & Community Development Department (Department) to provide comprehensive supportive services in permanent housing developments funded under the No Place Like Home (NPLH) Notice of Funding Availability (NOFA).

This Appendix summarizes the information that must be collected and the process for reporting this information to the LACDA. The reporting requirements vary by unit type; NPLH-assisted units versus non-NPLH-assisted units. Reporting requirements will be updated from time to time and applicants are required to adhere to the latest requirements. DMH will provide latest reporting requirements to each project.

## **1. DATA COLLECTION & REPORTING REQUIREMENTS**

The following data must be collected and submitted to DMH and the LACDA on an annual basis.

### *Data Required for NPLH-Assisted and Non-NPLH-Assisted Units:*

Projects are required to collect the data listed below, inclusive of both NPLH-assisted and non-NPLH-assisted units:

- Project location, services, and amenities;
- Number of NPLH-Assisted Units, total Units assisted by other government programs, and total non-Assisted Units;
- Project occupancy restrictions;
- Number of individuals and households served during the specified year;
- Homeless status upon entry into the unit (e.g., homeless, chronically homeless or at risk of chronic homelessness);
- Veteran status (i.e., the number of tenants who served on active duty in the armed forces of the United States for tenants over age 18);
- Mental health status. Note: no information on specific mental health diagnoses should be reported. However, projects are required to maintain documentation of tenant eligibility, including verification by a qualified mental health provider of a serious mental illness or a serious emotional disturbance for a child or adolescent for the qualifying household member; and
- Average Project vacancy rate during the reporting period (12-month average).

### *Data Required for NPLH-Assisted Units Only:*

Projects are required to collect the data listed below for all NPLH-assisted units only:

- Average vacancy rate of NPLH-Assisted Units during the reporting period (12-month average);
- Head of Household and all other household members - gender, race, ethnicity, age/birthdate;
- Income levels of NPLH tenants as a percentage of AMI, (i.e., 10 percent of AMI, 15 percent of AMI, 20 percent of AMI, etc.);

- The percentage of NPLH tenants who have lived in the building less than 12 months, 12 to 24 months, and longer than 24 months;
- The number of tenants who moved into a NPLH-Assisted Unit during the reporting period who, prior to Project entry, were Chronically Homeless, Homeless, or At-Risk of Chronic Homelessness, according to NPLH Guidelines;
- The number of tenants who served on active duty in the armed forces of the United States (for tenants over age 18);
- The number of tenants who continue to have a Serious Mental Disorder or the number who are Seriously Emotionally Disturbed Children or Adolescents, as defined in Welfare and Institutions Code Section 5600.3;
- Of those who moved in during the reporting period, the number of tenants who were referred from:
  - CES and/or;
  - DMH;
  - A State Department of Developmental Services regional center; or
  - Another reported source.
- Of those who moved in during the reporting period, the length of time prior to moving in that they reported they were:
  - On the streets (including a vehicle or other place not meant for human habitation); or
  - In an emergency shelter, safe haven, or transitional or interim housing.
- Of those who moved in during the reporting period, and to the extent the information was available prior to referral to the Project, the number of tenants who had a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury that:
  - Is expected to be long-continuing or of indefinite duration;
  - Substantially impedes the individual's ability to live independently; and
  - Could be improved by the provision of more suitable housing conditions.
- Of those who moved in during the reporting period, and to the extent the information was available prior to referral to the Project, the number of tenants who had a developmental disability, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002);
- Of those who moved in during the reporting period, and to the extent the information was available prior to referral to the Project, the number of tenants who had the disease of acquired immunodeficiency syndrome (AIDS) or any condition arising from human immunodeficiency virus (HIV).
- For tenants who exited NPLH-Assisted Units during the reporting period, the number of tenants who exited during the reporting period and the exit destination including the following:
  - Other permanent housing;
  - The street, emergency shelter/interim housing
  - Transitional housing, or safe haven; or
  - An institutional destination, and the specific institutional destination, if known (including, but not limited to hospitalization or psychiatric

hospitalization, residential substance use treatment facility, skilled nursing facility, jail or prison).

- The number of tenants who died during the reporting period.
- For tenants who leased or remained in NPLH-Assisted Units during the reporting period:
  - Changes in employment income during the reporting period;
  - Changes in non-employment cash income during the reporting period; and
  - Changes in total cash income during the reporting period.

DMH will provide additional information on emergency room visits for NPLH tenants before and after move in; average number of hospital and psychiatric facility admissions and in-patient days before and after move-in; and number of arrests and returns to jail or prison before and after move-in.

Tenant Satisfaction Survey: The applicant shall provide its tenants an anonymous survey which evaluates residents' experiences living in the development to include but not limited to interactions with property management, response to maintenance requests, maintenance of the building, and safety on an annual basis. The applicant shall provide a summary of this data annually.

## **2. PROCESS FOR COLLECTING & SUBMITTING REQUIRED DATA**

The LACDA and DMH establish the following requirements for collecting and submitting the data elements referenced above:

- Applicants shall agree to enter any NPLH data into the Homeless Management Information System (HMIS) for the Continuum of Care in which the project is located for tenants who were homeless or chronically homeless at move-in to a NPLH-assisted unit.
- The designated mental health provider shall agree to enter NPLH data for persons who were determined to be at risk of chronic homelessness at move-in in DMH's Outcome Measures Application or similar system as determined by DMH.
- The data elements shall be submitted in electronic format on a form provided by the Department.
- The data shall be submitted to DMH and the LACDA no later than September 30 of each year for the previous State fiscal year of activity (July 1-June 30).
  - The LACDA and DMH shall establish internal deadlines for submission of project-level information.
- The LACDA, DMH, the property manager, and the lead service provider shall work together to resolve any data quality concerns to the best of their ability prior to submission.
- Applicants shall also agree to provide any required data not captured by HMIS.