



**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;
Public Housing Agencies that
Administer the Housing Choice
Voucher Program

Notice PIH 2011-54 (HA)

Issued: September 20, 2011

Expires: Effective until amended,
superseded, or rescinded

CORRECTION TO NOTICE: A correction in Section 2.a. (7) regarding the maximum vacancy payment to an owner.

Cross References:

Subject: Guidance on the Project-Based Voucher Program

1. Purpose The purpose of this notice is to clarify certain issues related to the project-based voucher (PBV) program. HUD intends to issue a more in-depth guidebook related to this program. However, this notice is intended to address specific concerns that have come to the attention of the Department recently. Please note that this notice is not inclusive of all requirements related to the PBV program.

2. Implementing a PBV Program If a PHA decides that it wants to implement a PBV program, it must establish various policies and procedures prior to such implementation. Listed below are those policies and procedures that must be addressed in the PHA's Administrative Plan and/or PHA Plan.

a. Administrative Plan The PHA's Administrative Plan must describe the following:

- (1) 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.
- (2) 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.

- (3) If the PHA plans to exceed the 25 percent cap on the number of units in a project that may have PBV attached for non-elderly and non-disabled families, the Administrative Plan must describe the type of services offered to these families for a project to qualify for the exception to the 25 percent cap and the extent to which such services will be provided. Please reference 24 CFR 983.56(b)(2). If the unit is excepted for a family receiving supportive services, the PHA must describe the form and frequency of monitoring the continued receipt of these services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirements.
- (4) 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. Please note that 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-all inclusive 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.
- (5) Any tenant screening done by the PHA must be stated in the Administrative Plan. See 24 CFR 983.255(a).
- (6) 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 983.259(b).
- (7) 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.

b. PHA Plan In accordance with Section 7.0 of the PHA Plan Template (form HUD-50075), if the PHA intends to use the PBV program, it must provide the projected number of PBV units, their general locations and how project basing would be 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.

3. Proposal Selection Process The Department is aware that developers of low-income housing tax credit (LIHTC) units often approach the local PHA seeking a commitment of PBVs. A PHA **cannot** commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51. The only time a PHA does not have to do its own competitive selection of proposals is when the units were selected under a similar federal, state or local competition within three years from the PHA's selection date of the units for PBV assistance as stated in 24 CFR 983.5(1)(b). A LIHTC competition can only be considered in this regard if no PBVs were committed by the local PHA because such a commitment gives that applicant an advantage in the LIHTC competition and, therefore, would not serve as a fair comparable competitive selection.

4. PHA-Owned Units PHA-owned units are eligible for the PBV program. A PHA-owned unit is defined in 24 CFR 983.3 as, "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." However, the HUD field office or HUD-approved independent entity must review the selection process and determine that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA's Administrative Plan. Please reference 24 CFR 983.51(e). Non-competitive selections must also be reviewed to ensure that the selection was done properly particularly in regard to LIHTC project applications not receiving the benefit of a commitment of PBVs by the PHA and that the comparable competition was held within three years of project selection. See 24 CFR 983.51(b)(2). For other requirements related to PHA-owned units such as rent reasonableness determinations and inspections see 24 CFR 983.59. These functions are also required to be done by the HUD-approved independent entity.

5. Agreement to Enter into a Housing Assistance Payments (AHAP) Contract 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. However, a PHA may not execute an AHAP until a subsidy layering review and an environmental review are completed.

6. Subsidy Layering Review (SLR) These reviews are only required for projects involving new construction and rehabilitation. The purpose of this review is to avoid excess subsidy. See 24 CFR 983.55. Pursuant to the passage of the Housing and Economic Recovery Act

(HERA) of 2008 and in accordance with the *Federal Register* notice, *Administrative Guidelines; Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts*, issued on July 9, 2010, housing credit agencies can submit a notice of intent to conduct SLRs rather than the Department since they are qualified agencies. State housing credit agencies are encouraged to submit such a notice to Headquarters, if they have not already done so, since these agencies are already performing SLRs for LIHTC projects. Otherwise, Headquarters is still required to do them. No AHAP may be executed until a SLR is completed by the appropriate agency.

7. 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. As PHAs are aware, the Housing and Economic Recovery Act (HERA) added a section 8(o)(13)(M) of the U.S. Housing Act of 1937 and paragraph (ii) of that new section relieves a PHA from undertaking an environmental review for an existing structure, except to the extent such a review is otherwise required by law or regulation. This new statutory section was discussed in the *Federal Register* notice entitled “The Housing and Economic Recovery Act of 2008 Applicability to HUD Public Housing, Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs,” published on November 24, 2008, at 73 FR 71037. In that notice, HUD advised that under 24 CFR part 58, federal environmental reviews are undertaken by a Responsible Entities (usually units of general local governments), not PHAs. In addition, any federally required environmental review is required by law or regulation, so there do not appear to be any federally required environmental reviews that would be eliminated by this provision.

8. Physical Accessibility PBV projects must meet program accessibility requirements of 24 CFR 983.102. A PHA must ensure that the percentage of accessible dwelling units complies with HUD requirements and that design and construction requirements, as applicable, are met.

9. Equal Opportunity Requirements A PBV program must comply with all applicable equal opportunity and nondiscrimination requirements and the PHA Plan’s certification to comply with civil rights laws and to affirmatively further fair Housing as required by 24 CFR 983.8.

10. Information Contact Inquiries about this notice should be directed to Phyllis Smelkinson, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 or Phyllis.Smelkinson@hud.gov.

11. 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 following active information collections contained in this notice have been approved under the PRA-OMB Control Number 2577-0169.

/s/

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing