



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of
All Multifamily Hub Directors
All Multifamily Program Center Directors
All Multifamily Operations Officers
All Multifamily Directors of Project Management
All Multifamily Field Counsel
All Contract Administrators
All Multifamily Project Owners

Notice H-2014-14

Issued: October 9, 2014

**Expires: This Notice
remains in effect until
amended, superseded, or
rescinded.**

Cross Reference:

SUBJECT: Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937

I. PURPOSE

This Notice sets forth the Department's policies and procedures for transferring all or a portion of any remaining budget authority of a project-based Section 8 Housing Assistance Payments (HAP) Contract to one or more contracts under Section 8(bb)(1) of the United States Housing Act of 1937 (the Act) where the existing HAP contract is terminated by mutual agreement.¹ Section 8(bb)(1) of the Act shall be referred to throughout this Notice as "Section 8(bb)."

¹ Section 8(bb) applies in two other contexts not covered by this Notice: those in which (1) the section 8 HAP contract expires and is not renewed (regardless of whether the Owner "opts out" by complying with the one-year notice requirement codified in section 8(c)(8)(A) of the Act and with the related administrative requirements in 24 CFR 402.8 and Chapter Eleven of the Section 8 Renewal Policy Guidebook); and (2) HUD or a PHA terminates the Section 8 HAP contract for cause. In these contexts, Housing staff will ensure that any budget authority remaining on the Section 8 HAP contract at the time of its expiration or termination is transferred to another section 8 HAP contract in accordance with Section 8(bb) and HUD procedures.

II. BACKGROUND

Section 8(bb) provides the Department with a tool for preserving Section 8 budget authority. Under Section 8(bb), if a project-based Section 8 contract is terminated or expires and is not renewed, HUD is required to transfer any remaining budget authority to another contract (either a new or an existing Section 8 HAP contract) to provide assistance to eligible families, including eligible families receiving project-based assistance at the time of contract termination, under the terms and conditions prescribed by HUD. The remaining budget authority, however, must not be required to meet any rescissions under a HUD Appropriations Act. Headquarters will notify the Field in the event there are rescission requirements in any HUD Appropriations Act that limit the use of this preservation tool.

The contract administrator (either HUD or a Public Housing Agency (PHA) under an Annual Contributions Contract (ACC) with HUD) and the Owner of the project from which any budget authority on the Section 8 HAP contract is to be transferred must mutually agree to the termination of all or a portion of the existing Section 8 HAP contract and to the transfer of any remaining budget authority. The Owner of the project to which the budget authority is transferred must agree to accept the budget authority.

The project from which HUD transfers budget authority may continue to exist as a multifamily housing project after the transfer, or it may cease to exist. The budget authority may be transferred to one or more projects.

III. APPLICABILITY

- A. The requirements in this Notice apply to all project-based Section 8 HAP contracts on existing multifamily housing projects administered by the Office of Multifamily Housing Programs, whether through a Performance-Based Contract Administrator, a Traditional Contract Administrator, or by HUD.
- B. This Notice applies only when the contract administrator and the Owner of a project which is subject to an existing project-based Section 8 HAP Contract have mutually agreed (i) to terminate the Contract so that all of the remaining budget authority can be transferred to another multifamily housing project; or (ii) to subdivide the Contract and then terminate one or more of the resulting Contracts so that the budget authority remaining on the contract(s) that was terminated may be transferred to the Section 8 HAP contract on one or more other multifamily housing projects. The other project(s) may be owned by the same Owner as the project from which the budget authority is being transferred or by a different Owner. If the budget authority associated with the terminated contract is to be transferred to a project owned by a different Owner, the Owner must agree to accept the budget authority that is to be transferred.

- C. The Contract to which HUD transfers budget authority may be an existing project-based Section 8 HAP contract, in which case (i) the additional units must already be in existence and ready for occupancy at the time HUD transfers budget authority; and (ii) the Owner and contract administrator must execute an Amendment to Project-Based Section 8 Housing Assistance Payments Contract Pursuant to Section 8(bb)(1) of the US Housing Act of 1937, hereafter referred to as Amendment B, to reflect the increase in the number of assisted units made possible by the transfer of budget authority and subjecting the project to the requirements of (i) the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5 Subpart G, (ii) the Physical Condition of Multifamily Properties of 24 CFR Part 200 Subpart P; and (iii) the Uniform Financial Reporting Standards of 24 CFR Part 5 Subpart H (Appendix Two-B).

On the same day that the Owner executes Amendment B, the Owner and the contract administrator must agree to terminate the amended contract, and the Owner must request that it be immediately renewed under MAHRA for a 20-year term under any renewal option for which the contract is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed. The Preservation Exhibit provides for the automatic renewal of the contract upon expiration (i.e., at the end of the 20-year renewal term) for a whole number of years to be filled in by the Hub/PC, which must be at least the number of years remaining on the contract at the time of its termination by mutual agreement.

If the project is not already subject to an existing project-based Section 8 HAP contract, the Owner must execute a new, original New Construction project-based Section 8 HAP contract (Appendix One). The budget authority cannot be transferred to the new Section 8 HAP Contract unless or until the units at Project B are existing and ready for occupancy.

- D. Section 8(bb) must only be used where the project from which budget authority will be transferred and the project(s) to which budget authority will be transferred are located in the same state. HUD may approve exceptions to this policy on a case-by-case basis.
- E. The remaining budget authority being transferred must be sufficient to fund the proposed number of units under the project-based Section 8 HAP contract to which budget authority is transferred. HUD has no statutory authority to increase the budget authority.
- F. This Notice does not apply when:
 - 1. There is a Section 8 project-based HAP contract administered by the Office of Public and Indian Housing (i.e., a Section 8 Moderate Rehabilitation contract or a Section 8 Project-Based Voucher HAP contract) or by the Office of

Community Planning and Development (i.e., a Section 8 Single-Room Occupancy Moderate Rehabilitation HAP contract).

2. An expiring project-based Section 8 HAP contract is renewed at an existing project.
3. There is no remaining budget authority on a project-based Section 8 HAP contract. HUD does not have the statutory authority to increase the budget authority to facilitate an 8(bb) transfer.
4. There is an enacted HUD Appropriations Act with rescission requirements. Headquarters will notify the Field of the rescission requirements.
5. The remaining budget authority from a terminated HAP contract has been recaptured by the Department.
6. An Owner requests transfer of debt, statutorily required low-income and very low-income use restrictions, in addition to all or a portion of a Section 8 HAP contract from one project to another. In those types of transactions, Section 214 of the Consolidated Appropriations Act, 2014, is the applicable statute, depending on whether all conditions stated in Section 214(c) can be satisfied. Section 214 is limited to qualifying transfers approved during Fiscal Years 2014 and 2015.²
7. Project A or Project B (see section IV “Definitions,” immediately below) is subject to an Interim (Full) Mark-to-Market Renewal Contract, an Interim (Lite) Mark-to-Market Renewal Contract, both of which are authorized under section 514 of MAHRA, or a Full Mark-to-Market Renewal Contract, which is authorized under section 515 of MAHRA. These properties are still eligible for transfer or receipt of Section 8 budget authority under Section 8(bb) but will be handled on a case-by-case basis until additional guidance is released.
8. Project A has a post-conversion project based rental assistance (PBRA) contract issued as part of the Rental Assistance Demonstration (RAD). Properties that have completed conversion to PBRA under RAD may only transfer the PBRA contract under the process described in PIH Notice 2012-32, Section 1.6.B.7, which generally does not permit a transfer within the first 10 years following such conversion.
9. Project A has a bond financed new regulation HAP contract, refunded with a sharing of HAP savings pursuant to Section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act.

² In contrast to Section 8(bb), which authorizes the transfer of only any remaining budget authority associated with a Section 8 HAP contract that is terminated or that expires and is not renewed, Section 214 authorizes, among other things, the transfer of the project-based assistance contract itself (in whole or in part).

IV. DEFINITIONS

- A. “Contract A” is the existing project-based Section 8 HAP contract at Project A.
- B. “Contract A1” is one of two or more contracts resulting from the mutual agreement of the parties to subdivide Contract A into two or more contracts for the purpose of retaining a portion of the project-based assistance at Project A. Contract A1 refers to the contract that is retained with reduced budget authority and a resulting smaller number of assisted units at Project A.
- C. “Contract A2” is one of two or more contracts resulting from the mutual agreement of the parties to subdivide Contract A into two or more contracts for the purpose of terminating Contract A2 by mutual agreement. Immediately after the termination of Contract A2 and, if applicable, of other contracts resulting from the subdivision of Contract A other than Contract A1 (e.g., Contract A3, Contract A4, etc.), the budget authority associated with the terminated contracts will be transferred to Project B.
- D. “Contract B” is the project-based Section 8 HAP contract at Project B. It may be an existing project-based Section 8 contract already at the project or a new project-based Section 8 HAP contract to which Project B becomes subject as the result of the Section 8(bb) transaction. In the latter event, the new project-based Section 8 HAP contract must be a New Regulation Part 880 HAP contract (Appendix One). There may be more than one project receiving the remaining budget authority and, therefore, there may be more than one existing or new project-based HAP contract in the transaction. All project-based Section 8 HAP contracts, whether new or existing, receiving transferred budget authority will be referred to as and be subject to all the requirements for, Contract B.
- E. “HUD-Affiliated Project” is a project with any HUD affiliation, including but not limited to; a HUD Use Agreement, FHA insurance, a HUD-Held mortgage, or some other form of HUD subsidy (e.g. interest reduction payments under Section 236).
- F. “MAHRA” - Multifamily Assisted Housing Reform and Affordability Act of 1997.
- G. “Owner A” is the Owner of Project A.
- H. “Owner B” is the Owner of Project B. There may be more than one Project B and, if so, they may be owned by the same or different Owners. Project B may also be owned by the same Owner as Project A.
- I. “Project A” is the multifamily housing project from which some or all of the remaining Section 8 budget authority is transferred. Owner A will be required to

adhere to all requirements for Project A, as described in Section V of this Notice. Project A will continue to exist as a HUD-affiliated project if it has a HUD-insured or HUD-held mortgage or retains a portion of the remaining budget authority in Contract A1.

- J. “Project B” is an existing multifamily housing project (or projects) to which some or all of the budget authority from Project A is transferred. There may be more than one project that is receiving the remaining budget authority, and they may be owned by the same or different Owners. Project B may also be owned by the same Owner as Project A. If there is more than one project, there will be a Project B, Project C, etc. **All projects (whether one project or more than one) receiving this transferred budget authority will be referred to as Project B in this Notice.** Project B Owners will be required to adhere to all requirements for Project B, as described in Section VI of this Notice.

- K. “Remaining Budget Authority” is the dollar amount remaining on a project-based Section 8 HAP contract at the time of termination by mutual agreement. The Hub/Program Center will determine whether there is any remaining budget authority and, if so, in what amount. This information is available from the Multifamily Housing Field Funding Coordinator.
 - 1. Most project-based Section 8 HAP contracts have already been renewed under MAHRA, which requires that multi-year renewal contracts be funded on a year-to-year basis. In cases where Contract A has already undergone renewal under MAHRA, any budget authority remaining on the contract at the time of termination by mutual agreement will be limited to an amount equal to or less than the amount needed to fund Contract A for a single year. There is more likely to be budget authority remaining on Contract A, in cases where Contract A has already undergone renewal under MAHRA, in scenarios in which it is terminated by mutual agreement at or close to the beginning of the one-year funding cycle for a multi-year renewal contract.

 - 2. In the rare case where Contract A is an original project-based Section 8 HAP contract (i.e., one that has not yet expired and thus has not been renewed under MAHRA), the remaining budget authority will consist of what is left from the original obligation of budget authority when the contract was executed (i.e., an estimate of the amount of money needed to fund the contract for its original, multi-year term), including any amounts added by amendment, as authorized under the heading “Project-Based Rental Assistance” in annual appropriations acts. There is more likely to be budget authority remaining on this type of Contract A in scenarios in which it is terminated by mutual agreement in the middle of its term.

V. **Project A**

A. Request to Transfer All Remaining Budget Authority: If all of the remaining budget authority will be transferred from Project A, the following programmatic requirements must be met. Owner A must submit all applicable documentation and certify that all requirements are met in their proposal for the transfer of budget authority under Section 8(bb)(1).

1. If all of the remaining budget authority will be transferred from Project A to Project B, Owner A and the contract administrator will mutually agree to terminate Contract A and the remaining budget authority associated with Contract A will be transferred to Project B.
2. If Project A will **not** continue to exist as a HUD-Affiliated Project, Owner A should submit the proposed plan for the future use of the project and demonstrate that there is no longer a need for affordable rental housing at the project. This should include an explanation of why the Section 8 assistance is no longer needed at the project and how the transfer of the budget authority will have no adverse impact on the tenants affected by the transfer, including those accepting vouchers, those remaining at the property, and those relocating to Project B.

B. Request to Transfer Part of the Remaining Budget Authority: If Owner A requests that some of the remaining budget authority is transferred to Project B and some of the budget authority remains at Project A, Owner A must meet the following requirements and certify as such in their proposal for the transfer of budget authority under Section 8(bb)(1).

1. An explanation as to why there is need for only a portion of the Section 8 assistance and why there will be no adverse impact on the long-term preservation of the project or the tenants affected by the transfer, including those accepting vouchers, those remaining at the property, and those relocating to Project B. This must include a revised operating budget to show that Project A will remain financially viable after transfer of a portion of the remaining budget authority.
2. If Contract A is subdivided (e.g., into Contract A1 and Contract A2), Owner A and the contract administrator must execute the Amendment to Project-Based Section 8 Housing Assistance Payments Contract Pursuant to Section 8(bb)(1) of the US Housing Act of 1937, hereafter referred to as Amendment A (attached as Appendix Two-A) to Contract A1. Amendment A reflects the number of assisted units at Project A resulting from the transfer of budget authority and requiring compliance with the requirements of (a) the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5 Subpart G, (b) the Physical Condition of Multifamily Properties of 24 CFR Part 200 Subpart P; and (c) the Uniform Financial Reporting Standards of 24 CFR Part 5 Subpart H (Appendix Two-A).
3. On the same day Amendment A is executed, Owner A and the contract

administrator must mutually agree to terminate Contract A1, and Owner A must submit a request for the immediate renewal of Contract A1 for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract A1 is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed.

4. Owner A must submit a separate request for each project-based Section 8 HAP contract that is to be terminated (or subdivided and then terminated). The Hub will consider each request separately. If the proposal is part of a phased transfer of the budget authority under Contract A, the phasing plan should be included with the submitted proposal for information purposes only. HUD will only approve one request to transfer budget authority at a time. Additional requests should be submitted as the phased project moves forward.

C. Requirements for All Requests to Transfer Budget Authority from Project

A: Owner A must meet the below requirements. Owner A must submit all applicable documentation and certify that all requirements are met in their proposal for the transfer of budget authority under Section 8(bb)(1).

1. Owner A must be current in the submission of audited or Owner-certified Annual Financial Statements and Monthly Accounting Reports, if applicable, for the prior three-year period or for the period of time the new ownership has been in place, whichever is less.
2. If Project A is subject to a Section 236 mortgage, the Owner must have submitted Excess Income Reports for the prior seven-year period. All excess income owed to the Department, regardless of timeframe, must be paid in full prior to HUD's approval of the project Owner's request to transfer the budget authority.
3. Owner A must resolve all non-compliance flags, if any, or the Owner must have a HUD-approved plan in place to resolve any flags.
4. If Project A will continue to exist as a HUD-affiliated project after transfer of the remaining budget authority and if it received any deficiencies on its last HUD physical inspection, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD.
5. If Project A will continue to exist as a HUD-affiliated project after transfer of the budget authority and if it received a less than satisfactory rating in any section of its last three Management and Occupancy Reviews, corrective actions satisfactory to HUD must be completed or a plan for those corrective actions and an acceptable timeframe for their completion must be approved by HUD.

6. If Project A will continue to exist as a HUD-Affiliated Project, the transfer of budget authority must have no adverse impact on the financial and physical feasibility of the Project. To demonstrate there is no adverse impact, Owner A must certify in writing that they will make all mortgage payments (if applicable), meet all physical condition standards and management requirements, and be in compliance with all other business agreements imposed by HUD or the lender.
7. If Project A is subject to an FHA-insured mortgage, Owner A must ensure that the FHA lender submits a letter stating that it consents to the proposed transfer of budget authority. If a mortgage prepayment is planned in conjunction with the transfer of authority, HUD may waive this requirement.

D. Owner A's Proposal: In addition to the submission of all applicable documentation and written certification that the above requirements are met as applicable, Owner A's proposal must include the following:

1. A written request asking to terminate the project-based Section 8 HAP Contract. The request will specify whether all or a portion of the remaining budget authority will be transferred³, the amount of the remaining budget authority that will remain at the project, if any; and if known, the name of the project to which the budget authority will be transferred, and whether the budget authority will be transferred to a new or existing project-based Section 8 HAP contract (the Multifamily Hub/Program Center (PC) will provide this information if Owner A does not have it). The narrative will also include a description of the proposed transaction, why it is being proposed, and how there will be no adverse impact to the existing assisted tenants as a result of the transaction.
2. A description of the steps Owner A has taken to market the vacant units, if applicable, at Project A.
3. The number and configuration of the units, current rents and operating budget, as well as the proposed number and configuration of the units, rents and operating budget after transfer of the budget authority. If Project A will remain a HUD-affiliated Project, the proposed operating budget must show that Project A will remain financially viable after the transfer of the budget authority.

Note: The total number of units under Contract A1 and Contract B may be greater than the number of units under Contract A prior to its termination by mutual agreement, provided there is no increase in the total amount of budget authority and that there is sufficient budget authority to cover the units.

³ Prior to submission of the proposal, the Owner of Project A will need to consult with the Hub/PC to determine the amount of the total remaining budget authority on Contract A.

The total number of units under Contract A1 and Contract B may be less than the number of units under Contract A prior to the transfer, if all eligible tenants residing in an assisted dwelling unit at the time of the transfer are protected from displacement (e.g. with a comparable unit at Project A, a comparable unit at Project B, a tenant protection voucher, etc.). The reduced number of units supported by the budget authority at Project B should be substantially the same (within the lesser of five percent or five units) as the number of units supported by the budget authority at Project A. However, a proposed reduction of units beyond the identified threshold will be permitted in limited circumstances, if either:

- a. The Policy Development and Research (PD&R) Analysis (Section VIII.B.1) determines the transfer will result in a material improvement in the location of the budget authority, but the location has higher rents than the location of Project A; or
 - b. Project B is in the same Small Area Fair Market Rent (SAFMR) area as Project A, and a reconfiguration of units is necessary due to the average vacancy rate in a given unit type being at least 25 percent for at least 24 months in accordance with Housing Notice 2011-03, *Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units*
4. A Relocation Plan, if applicable, including a budget and Sources and Uses Statement, that describes relocation of the existing tenants to other units within Project A or to Project B (see Section VII.B for detailed requirements).
 5. A copy of the notice advising tenants of the transfer, copies of all the tenant comments, Owner A's evaluation of the tenant comments, a copy of the sign-in sheet from the tenant meeting, and a certification by the transferring Owner that it has complied with all of the requirements of 24 CFR 245.410, 245.415, 245.416 through 245.419, as applicable, and 245.420 (see Section VII.A for detailed requirements).
 6. Owner A must identify any Fair Housing litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the Owner and HUD. The Office of Fair Housing and Equal Opportunity (FHOO) will ensure there is no conflict between the agreements and the proposed transfer. If there is a conflict, Owner A may propose modifications to the remedial agreement as part of the transfer proposal.

VI. PROJECT B

If the remaining budget authority at Project A will be transferred to more than one project, there could be more than one Project B ownership entity. If so, each ownership entity that is receiving a portion of the remaining budget authority from

Contract A must meet the requirements in this Section prior to HUD's approval of the request to transfer all or a portion of the remaining budget authority.

The Hub/PC may assist in identifying Project B. Owner A may know of a project, or Owners may make direct requests to the Hub/PC. Consideration should be given to the need for assisted housing in an area, the long-term feasibility of the project after receipt of the transferred budget authority, and the Owner's ability to meet the criteria listed below.

- A. Project B General Requirements:** Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).
1. Owner B must show that receipt of the remaining budget authority, and consequently the units assisted by the budget authority, is warranted by local demands for affordable housing and will ensure the long-term preservation of the project. Documentation to support the need for Section 8 assistance will include a list of the current tenants who are eligible for Section 8 assistance and/or eligible prospective tenants who are on the waiting list, and/or a market analysis that shows there are eligible families in the area.
 2. Project B must be an existing multifamily project consisting of existing dwelling units before receiving any transfer of budget authority. Projects under construction are not eligible to receive transferred budget authority. Conditional approval for transfer of budget authority to a contract at a newly constructed Project B may be provided but only with the understanding that the transfer cannot occur until construction of Project B is complete and the project is habitable (e.g. as demonstrated by a certificate of occupancy).
 3. Owner B may use the letter approving the transfer of the Section 8 budget authority as a conditional commitment to obtain financing to construct or substantially rehabilitate the project (the letter may also be used to secure financing for moderate repairs). However, no transfer of budget authority can occur until construction and/or substantial rehabilitation is complete and the project is habitable.
 4. Owner B must provide documentation to assist HUD in an environmental review of the transfer in accordance with environmental regulations and requirements at 24 CFR part 50, at the time of the submission of the transfer proposal. HUD will conduct the environmental review as required by part 50 prior to approving a transfer. HUD will document compliance on Form HUD-4128, "Environmental Assessment and Compliance Findings for the Related Laws." Owner B is responsible for submitting environmental information and reports, and should use Chapter 9 of the MAP Guide and the HUD Environmental Review website (available at

<https://www.onecpd.info/environmental-review/>) for guidance on environmental review information requirements. If Project B is currently HUD-affiliated, a new Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition), including a Vapor Encroachment Screen in accordance with ASTM E 2600-10 (or the most recent edition), is **not** required, unless the transfer involves:

- a. Significant ground disturbance (digging) or construction not contemplated in the original application or incompatible with current engineering or institutional controls;
- b. Site expansion or addition;
- c. Transfer to a site for which a Phase I ESA in accordance with ASTM E 1527-05 (or a more recent edition) has not been prepared previously; or
- d. Any other activities which may result in contaminant exposure pathways not contemplated in the original application or incompatible with current engineering or institutional controls.

After a request has been submitted to HUD, Owner B and other participants in the proposed transfer, including Owners and contractors on Project B, may not undertake or commit funds for acquisition, rehabilitation, conversion, or construction of the receiving property until HUD has completed the environmental review and notified Owner B that the transfer to Project B is acceptable. HUD may reject transfer requests with unacceptable environmental issues, or when mitigation of an issue is infeasible.

5. Owner B must not be subject to any of the following actions that have not been resolved to HUD's satisfaction: 1) A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status; and 2) A Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. 3614(a); or 3) A letter of finding identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974. HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to, current compliance with:

- a. A voluntary compliance agreement (VCA) signed by all the parties;
 - b. A HUD-approved conciliation agreement signed by all the parties;
 - c. A conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
 - d. A consent order or consent decree; or
 - e. A final judicial ruling or administrative ruling or decision.
6. Project B must comply with the site and neighborhood requirements below. Owner B must submit the address of the proposed property with their proposal and HUD will determine if the site meets the following requirements:
- a. The site and neighborhood 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, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.
 - b. 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.
 - c. 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.
 - d. **If Project B is new construction** and the budget authority will be transferred once construction is complete, Project B may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area and may not be located in an area of minority concentration.

If HUD determines that Project B will be located in an area of minority concentration, Owner B must submit supporting data (e.g., census data, evidence of local revitalization efforts, etc.) in order for HUD to determine that they meet one of the exceptions below:

- i. Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration. 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 which over a period of several years will approach an appropriate balance of housing opportunities 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 very low-income minority households and in relation to the racial mix of the locality's population.
 - A. Units may be considered to be comparable opportunities if they have the same household type and tenure type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.
 - B. Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:
 1. A significant number of assisted housing units are available outside areas of minority concentration.
 2. There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
 3. There are racially integrated neighborhoods in the locality.
 4. Programs are operated by the locality to assist minority households that wish to find housing outside areas of minority concentration.

5. Minority households have benefitted 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 households (or families) outside of areas of minority concentration.
 6. A significant proportion of minority households have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.
 7. Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- ii. The project is necessary to meet overriding housing needs that cannot be met in that housing market area. 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 changing 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, creed, sex, or national origin 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.
7. Project B must meet all applicable accessibility requirements, including, but not limited to, the accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act. Owner B must provide documentation that they have met all accessibility requirements in their proposal.
 8. Owner B must receive approval through the Previous Participation process, including 2530 reviews.
 9. Owner B must provide a tenant selection plan for the project and an Affirmative Fair Housing Marketing Plan that will be approved by HUD.
 10. If Project B is an FHA insured project, there may be no liens on Project B

other than the first mortgage that is secured by the project, unless the secondary financing on the project adheres to the following requirements:

- a. If the secondary financing is from a federal, state or local government agency, the subordinate loan may be secured by a promissory note and mortgage lien as is prescribed by the government funding source. Secondary financing or grants provided by public government entities or subsidiaries, when added to the first mortgage, may exceed 100 percent of the project's Fair Market Value (FMV) or Replacement Cost.
- b. When secondary financing is in place, the aggregate amount of the first mortgage and the private secondary loan may not exceed 92.5 percent of the FMV of the project, unless the project has or will receive Low Income Housing Tax Credits, in which case a project-specific waiver of the total loan to value may be considered.

B. Requirements if Project B is HUD-affiliated: If Project B is HUD-affiliated, Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).

1. If the project received a less than satisfactory rating in any section of its last three Management and Occupancy Reviews, corrective actions satisfactory to HUD must have been taken or a plan for those corrective actions and an acceptable timeframe for their completion must be approved by HUD.
2. Owner B must be current in the submission of audited or Owner-certified Annual Financial Statements and Monthly Accounting Reports, if applicable, for the prior three-year period or for the period of time the new ownership has been in place, whichever is less, and for Section 236 projects, Excess Income Reports for the prior seven-year period and all outstanding excess income, regardless of the time period.
3. Owner B must resolve all noncompliance flags, if any.
4. Project B must have a REAC score of at least 60 or, if it does not, Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction and bring the REAC score to 60 or above. If Project B does not have a current REAC physical inspection score, an inspection must be conducted and the score must be 60 or above or, if the score is less than 60, the Owner must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction.
5. If there is an existing Section 8 HAP contract (Contract B), Owner B and the contract administrator must execute Amendment B (Appendix Two-B).

6. Owner B and the contract administrator must mutually agree to terminate the amended Contract B on the same day it is amended, and Owner B must submit a request for the immediate renewal of Contract B for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract B is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed.
7. If there is no existing Section 8 HAP contract, Owner B and the contract administrator must execute a new regulation Part 880 project-based Section 8 HAP contract (Appendix One) with a one-day term. On the same day, Owner B and the contract administrator will also execute a Renewal Contract, effective at the end of the one-day term, the Renewal Contract will be renewed under any renewal option for which Project B is eligible and the budget authority transferred to a 20-year Renewal Contract under MAHRA. Please refer to the [Section 8 Policy Renewal Guide](#) for details on renewal options. For the purposes of calculating distributions, initial equity will be the initial equity used at Project A, unless Owner B contributes additional equity to Project B in conjunction with the Section 8(bb) transfer.

C. Requirements if Project B is not HUD-affiliated: If Project B is not HUD-affiliated, Project B must meet the below requirements. Owner B must submit all applicable documentation and certify that all requirements are met in their proposal to receive the transfer of budget authority under Section 8(bb)(1).

1. The project must have a REAC inspection prior to the transfer and receive a score of at least 60.
2. If the project has repair needs, a repair plan that details how the physical needs of the project will be addressed and comments on the status of any corrective action in progress, e.g., what repairs have been completed, what other corrective actions are pending, and target dates for completing these actions.
3. Owner B and the contract administrator must execute a New Regulation part 880 project-based Section 8 HAP contract (Contract B) with a one-day term (Appendix One). Pursuant to the Owner's request, a renewal contract with a 20-year term will be executed on the same day, subject to appropriations, under any renewal option under MAHRA for which Project B is eligible.

Please refer to the [Section 8 Policy Renewal Guide](#) for details on renewal options. For the purposes of calculating distributions, initial equity will be the initial equity used at Project A, unless Owner B contributes additional equity to Project B in conjunction with the Section 8(bb) transfer.

HUD will use the budget authority transferred from Project A until expended to reduce the amount of appropriations needed to fund the 20-year MAHRA

renewal contract.

D. Owner B's Proposal: In addition to the submission of all applicable documentation and written certification the above requirements are met as applicable, Owner B's proposal must include the following:

1. A written notification that Owner B agrees to accept the transferred budget authority.
2. The current number and configuration of the units, current rents and operating budget; the proposed number and configuration of the units, rents, the amount of budget authority to be transferred, and operating budget after transfer of the budget authority.

Note: The total number of units under Contract A1 and Contract B may be greater than the number of units under Contract A prior to its termination by mutual agreement, provided there is no increase in the total amount of budget authority and that there is sufficient budget authority to cover the units.

The total number of units under Contract A1 and Contract B may be less than the number of units under Contract A prior to the transfer, if all eligible tenants residing in an assisted dwelling unit at the time of the transfer are protected from displacement (e.g. with a comparable unit at Project A, a comparable unit at Project B, a tenant protection voucher, etc.). The reduced number of units supported by the budget authority at Project B should be substantially the same (within the lesser of five percent or five units) as the number of units supported by the budget authority at Project A. However, a proposed reduction of units beyond the identified threshold will be permitted in limited circumstances, if either:

- a. The Policy Development and Research (PD&R) Analysis (Section VIII.B.1) determines the transfer will result in a material improvement in the location of the budget authority, but the location has higher rents than the location of Project A; or
 - b. Project B is in the same Small Area Fair Market Rent (SAFMR) area as Project A, and a reconfiguration of units is necessary due to the average vacancy rate in a given unit type being at least 25 percent for at least 24 months in accordance with Housing Notice 2011-03, Policies and Procedures for the Conversion of Efficiency Units to One-Bedroom Units
3. To demonstrate that Project B is financially viable for the long term, written verification of the status of current or proposed financing (e.g., commitment letter); existing or proposed lender approval (FHA or other) of the proposed transaction; written approvals of the proposed transaction from any other

federal, state or local agencies that have a financial or other interests in Project B; copies of all existing/proposed mortgage documents; and a title report.

4. Written narrative that Owner B has at least 5 years of successful experience owning, managing, and if applicable, renovating assisted housing. The narrative should include the following information:
 - a. The names of the proposed development team members, if applicable;
 - b. Documentation demonstrating, as applicable, Owner B's recent successful experience financing, developing, rehabilitating, constructing, owning, and operating properties or projects that are similar to Project B.
 - c. A description of the teaming partner relationships.
 - d. A résumé for each proposed development team member, if applicable.
 - e. If applicable, documentation demonstrating that the development team has experience with at least three transactions involving similar financing to Project B.

VII. TENANT PROCEDURES AND PROTECTIONS

- A. **Tenant Notification:** Owner A must give the tenants and legitimate tenant organization(s) of Project A written notification of the proposed transfer and provide a minimum 30-day comment period. HUD will not accept a Section 8(bb) transfer request for any project unless Owner A has notified the tenants of the proposed transfer and has provided the tenants with an opportunity to comment on the proposed transfer.
 1. The notification should include the address and phone of the local HUD office, including the specific division and/or name and phone number of a contact at the local HUD office. The notification should be provided in appropriate formats as necessary to meet the needs of all, including persons with limited English proficiency and formats for persons with vision, hearing, and other communication-related disabilities (e.g., Braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).
 2. The notification will include a description of the impact of the request on tenants' rental assistance and tenant contributions and resulting tenant relocation rights and responsibilities under the Uniform Relocation Act (see section B below). In addition, the notification must inform the tenants

that if the project-based rental assistance budget authority supporting the unit they currently reside in will be transferred, they may be eligible for tenant protection vouchers if they choose not to relocate (see Section C below).

3. The notice must be delivered directly to each unit in the project or mailed to each tenant and posted in at least 3 places/common areas throughout the project, including the project office. In a project greater than 4 stories, the notice may be served either by delivery to each unit or by posting. If the posting method is used, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located.
4. The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the Owner is required to submit to HUD for a period of 30 days from the date on which the notice is served to the tenants. Any tenant comments must be available in the project office during normal business hours for public reading and copying.
5. The tenants have the right, during this period, to submit written comments on the transfer to Owner A and the local HUD office. Tenant representatives may assist tenants in preparing these comments.
6. Owner A must hold a meeting with the tenants and legitimate tenant organizations to discuss the details of the notification and answer questions.
7. Upon completion of the tenant comment period, Owner A must review the comments submitted by the tenants and their representatives and prepare a written evaluation of the comments. Any negative comments must be addressed. Owner A must then submit the following materials to the local HUD office at the time of submission of the request for transfer under Section 8(bb):
 - a. A copy of Owner A's Notification to the tenants;
 - b. A sign-in sheet from the tenant meeting;
 - c. Copies of all the tenant comments;
 - d. Owner A's evaluation of the tenant comments; and
 - e. A certification by Owner A that it has complied with all of the requirements of 24 CFR 245.410, 245.415, 245.416 through 245.419, as applicable, and 245.420.

B. Relocation: Owner A and Owner B are jointly responsible for determining which ownership entity or entities will be responsible for paying relocation expenses, including moving costs that residents incur in connection with a move to a different unit in Project A or to a unit in Project B. Under no circumstances shall the residents pay for any relocation costs incurred as a result of this transaction.

1. Any residents that move as a result of acquisition, rehabilitation or demolition or an activity or series of activities that include transfer of budget authority under Section 8(bb) may become eligible for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).
2. Questions regarding URA applicability should be brought to the attention of the HUD Regional Relocation Specialist assigned to the state where the project is located.
3. A state-by-state list of Regional Relocation Specialists is available at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/contacts.

C. Tenant Protection: If a tenant chooses not to relocate in connection with a transaction under this Notice, Tenant Protection Vouchers (TPVs) will be offered to eligible tenants at Project A, subject to available appropriations. A tenant may receive a TPV, if they meet the eligibility requirements for voucher assistance, and the unit that they currently reside in is supported by project-based rental assistance budget authority that is subject to transfer as part of the Section 8(bb)(1) transaction. Owner A will notify the tenant of their potential eligibility to receive a TPV at the time of tenant notification (see Section A) and subsequently notify the Multifamily Hub/PC regarding how many TPVs are requested. If TPVs are needed, the Multifamily Hub/PC should work with the Public and Indian Housing (PIH) field office to follow the procedures outlined in PIH Notice 2001-41.

D. Tenants Moving from Project A to Project B: Tenants that choose to move from Project A to Project B remain subject to their existing lease requirements and all occupancy rules under the Section 8 project-based rental assistance program (please see HUD Handbook 4350.3 for greater detail on occupancy requirements). Owner B may not seek to terminate the lease of a tenant from Project A for actions that occurred prior to the Section 8(bb)(1) transfer but the tenant will be subject to ongoing eligibility requirements for actions that occur after the transfer. Any eviction procedures currently underway at Project A will not be affected by the transfer of budget authority.

VIII. Multifamily HUB/PC RESPONSIBILITIES

The Multifamily Hub/PC will review and analyze the proposals from the Owners A and B and request additional information, as necessary.

A. In reviewing the proposals, the Multifamily Hub/PC will:

1. Ensure that Owners A and B meet the requirements outlined in Sections V, VI, and VII.
2. Ensure that Owner A has addressed any comments received from the tenants regarding the proposed transaction.
3. Ensure that the proposal does not include any involuntary displacement of residents.
4. Ensure that the budget authority will be transferred to a project that is in the same state as Project A. If Owner A or B proposes to transfer the budget authority outside of the state, HUD must approve the transfer based on Owner A and/or Owner B's provided justification.
5. Perform an analysis to ensure that the transfer of budget authority is budget neutral. Headquarters must approve this analysis prior to the transfer. The Department has no statutory authority to increase the budget authority to effectuate the transfer.
6. Ensure that the budget authority will be transferred to an existing project(s) with existing units. Projects under construction are not eligible to receive transferred budget authority. Approval for transfer of budget authority to a contract at a newly constructed or substantially rehabilitated Project B may be provided, however, with the understanding that the transfer cannot occur until construction on Project B is complete and the property is habitable.
7. Ensure Owner A and Owner B have demonstrated that Project A (if the project will remain HUD-affiliated) and Project B will remain financially viable after the transfer of budget authority.
8. Review the Tenant Selection Plan, Affirmative Fair Housing Marketing Plan, and Tenant Relocation Plan (if applicable) for sufficiency.
9. Forward the following components of the proposal to FHEO for review and approval:
 - a. The Affirmative Fair Housing Marketing Plan.
 - b. The Tenant Selection Plan if the Owner wishes to adopt a local or residency preference (see HUD Handbook 4350.3, page 4-3).

- c. The address of Project B to determine compliance with Section VI.A.6.a of this Notice, and if new construction, Section VI.A.6.d of this Notice. If FHEO determines that Project B will be located in an area of minority concentration, they must notify the Multifamily Hub/Program Center staff, who will notify Owner B that they must submit supporting data (e.g., census data, evidence of local revitalization efforts, etc.) in order for FHEO to determine that Project B meets one of the exceptions outlined in Section VI.A.6.d.i or ii.
 - d. FHEO will send a letter to the Multifamily Hub/Program Center indicating approval or disapproval of the proposed transaction within 30 business days of receipt of all pertinent information or request an extension for additional time to review the proposal.
10. Use the address submitted by Owner B to determine if the site and neighborhood of Project B meet the criteria outlined in Section VI.A.6.b and c.
 11. Review the documentation submitted to indicate that Owner B is in compliance with all applicable accessibility requirements of the Fair Housing Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.
 12. If applicable, contact the regional relocation specialist to ensure that the Tenant Relocation Plan adheres to the requirements of the Uniform Relocation Act.
 13. Through the analysis of budget authority, ensure that the remaining budget authority is sufficient to cover the total number of units under Contract A1, if applicable, and Contract B.
 14. Review the narrative detailing the capacity of the proposed owner and management agent of Project B to own, operate, manage, and if applicable, renovate affordable housing.
 15. Verify Project A does not have a bond financed new regulation HAP contract, refunded with a sharing of HAP savings pursuant to Section 1012 of the Stewart B. McKinney Homeless Assistance Amendments Act.
 16. Review the information submitted by Owner B to assist HUD with an environmental review of the transfer, as described at VI.A.4, above, and then conduct an environment review in accordance with the environmental regulations and requirements at 24 CFR part 50, prior to approving the transfer. Document the environmental review on Form HUD-4128, "Environmental Assessment and Compliance Findings for the Related

Laws”. Guidance for completing the HUD-4128 can be found at the Multifamily Accelerated Processing (MAP) Guide, Chapter 9 and the HUD Environmental Review website (available at <https://www.onecpd.info/environmental-review/>). HUD may reject transfer requests with unacceptable environmental issues, or when mitigation of an issue is infeasible.

- B. If the Hub/PC finds that the Owners’ proposals meet the requirements of Sections V, VI, and VII of this Notice, the Hub Director shall submit a recommendation for approval with the complete package to the Policy Development and Research (PD&R) Field Economist for review and an analysis. The PD&R Field Economist will:
1. Provide an analysis for each transfer request to enable Multifamily to assess whether there is sufficient demand for affordable rental housing in the receiving market area and that the transfer does not occur in neighborhoods with highly concentrated poverty. This analysis will consist of the following:

| | Inter-Fair Market Rent (FMR) area transfers | Intra-Fair Market Rent (FMR) area transfers |
|-------------------------------|--|--|
| | For Inter-FMR Area transfers, there can be two types: 1) Transferring to a new metropolitan area; or 2) transferring to a new non-metro county. | For Intra-FMR transfers, there can be three types: 1) Within a metro area to a new neighborhood (Small Area Fair Market Rent (SAFMR)/Zip); 2) within a metro area, in the same neighborhood (SAFMR/Zip code); and 3) within a non-metro county. |
| New Metro Neighborhood | For moves into a metropolitan area, the receiving property’s neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless: <ol style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAFMR | Within a metro area to a new neighborhood (SAFMR/Zip code), the receiving property’s neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless: <ol style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will include and result in new construction and substantial rehabilitation of mixed income housing; or b. The receiving property is in a SAFMR |

| | Inter-Fair Market Rent (FMR) area transfers | Intra-Fair Market Rent (FMR) area transfers |
|-------------------------------|--|--|
| | <p>area with a poverty rate between 30 and 40 percent; and either:</p> <ol style="list-style-type: none"> 1. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline. | <p>area with a poverty rate between 30 and 40 percent; and either</p> <ol style="list-style-type: none"> 1. The proposed receiving site has a higher SAFMR than the current site; or 2. The proposed receiving site is considered immediately adjacent (within ½ mile) to the current site; or 3. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 4. The poverty rate has seen significant recent decline. |
| Old Metro Neighborhood | <p>N/A: By definition moving the budget authority to a new FMR area will transfer the budget authority to a new neighborhood.</p> | <p>Within a metro area, and in the same neighborhood (SAFMR/Zip code), the receiving property’s neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ol style="list-style-type: none"> a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or b. The SAFMR area is between 30 and 40 percent and at least 50 percent of the units at the receiving property are unassisted and either: |

| | Inter-Fair Market Rent (FMR) area transfers | Intra-Fair Market Rent (FMR) area transfers |
|------------------|--|--|
| | | <ol style="list-style-type: none"> 1. The proposed receiving site is considered immediately adjacent (within 1/2 mile) to the current site; or 2. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or 3. The poverty rate has seen significant recent decline. |
| Non-Metro | <p>For moves to a non-metropolitan county, the receiving property must be in a county that has a poverty rate less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent, and:</p> <ol style="list-style-type: none"> 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing. | <p>Within the same non-metro county, the receiving property must be in a county that has a poverty rate of less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent and:</p> <ol style="list-style-type: none"> 1. The housing market activity within the county would indicate that the area is revitalizing; or 2. The poverty rate has seen significant recent decline; or 3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing. |

2. The PD&R field economists will write a memo detailing the analysis results to the Hub/PC that is reviewing the transfer proposal.
 3. The Multifamily Hub/PC will review the memo. If PD&R has advised against the transfer, the Multifamily Hub/PC will work with the PD&R field economist to understand the reason for the rejection and communicate this reason to the Owner.
- C. If the Multifamily Hub/PC finds that the owners' proposals meet the requirements of Sections V, VI, and VII of this Notice, and the PD&R field economist's memo recommends the transfer, the Hub Director shall submit a recommendation for approval to Headquarters, Director, Office of Asset Management and Portfolio Oversight. The recommendation will include:
1. The analysis performed by the Multifamily Hub/PC to ensure that the transfer of budget authority will not result in an increase in the amount of existing budget authority.
 2. The feasibility analyses described above.
 3. Background information on Project A and Project B.
 4. Summary information on how Project A and Project B meet the requirements of Sections V, VI, and VII.
 5. The number of units and amount of budget authority that will be included under each contract.
 6. The PD&R field economist's memo detailing their analysis.
- D. Headquarters' Review and Approval
1. Upon receipt of the completed package from the Hub/PC, the responsible Headquarters office will review the package.
 2. If the package meets the requirements defined in this Notice, Headquarters will prepare an approval memo to the Multifamily Hub/PC.
 - a. The Headquarters approval memorandum will include an additional line for the signature of the Performance Based Contract Administrator's (PBCA) authorized representative for the PBCA to consent to the termination by mutual agreement (and to the prior subdivision, if applicable) of any and all HAP contracts for which the memorandum requires termination by mutual agreement.

- b. Upon receipt from Headquarters, this memorandum will be sent to the PBCA by the Hub/PC.
 - c. An authorized representative of the PBCA must sign this memorandum on the designated signature line.
- E. Upon receipt of approval from Headquarters, the Multifamily Hub/PC will ensure that (See Appendix Four for further clarification):

1. For Project A:

- a. If all of the remaining budget authority is to be transferred, Contract A is terminated before the transfer takes place.
- b. If a portion of the remaining budget authority will remain at Project A, Contract A is subdivided into two or more contracts (e.g., Contract A1, Contract A2, etc.) prior to termination of Contract A. The budget authority associated with Contract A1 will remain at the project and the contract will be amended using Amendment A (attached as Appendix Two-A). Contract A2 will be terminated by mutual agreement, and the budget authority associated with Contract A2 (and others, if applicable) transferred to Project B.
- c. Owner A and the contract administrator mutually agree to terminate amended Contract A1, and on the same day Owner A and the contract administrator execute a renewal of Contract A1 for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract A1 is eligible.
- d. The Preservation Exhibit (Appendix Three) is attached to the 20-year renewal contract and is completed.

1. For Project B:

- a. If there is an existing Section 8 HAP contract, Owner B and the contract administrator must execute Amendment B (attached as Appendix Two-B).
- b. Owner B and the contract administrator must mutually agree to terminate amended Contract B, and on the same day, Owner B and the contract administrator must execute a renewal of Contract B for a 20-year term, subject to appropriations, under any MAHRA renewal option for which Contract B is eligible. In addition, the Preservation Exhibit (Appendix Three) must be attached to the renewal contract and completed.

- c. If there is no existing Section 8 HAP contract at Project B, the Owner and the contract administrator execute a new regulation Part 880 project-based Section 8 HAP contract (Contract B) with a one-day term (Appendix One). On the same day, Owner B will execute a renewal contract, that will be effective at the end of the one-day term, and will be renewed under any renewal option for which Project B is eligible with the understanding that HUD will use the budget authority transferred from Project A until expended to reduce the amount of appropriations needed to fund the 20-year MAHRA Renewal Contract.
- d. Owner B receives approval through the Previous Participation process, including a 2530 review.
- e. Before the transfer takes place, Project B must have a REAC score of at least 60 or Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction and bring the REAC score to 60 or above. If Project B does not have a current REAC physical inspection score, an inspection must be conducted and the score must be 60 or above or the Owner must submit a plan that is acceptable to HUD to correct any identified deficiencies as part of the transfer transaction.

F. The Multifamily Hub/PC will also ensure that:

- 1. Contract A1 and Contract B are established as described in Appendix Five, “Steps for Establishing a New Section 8 Contract under Section 8(bb) in PAS/LOCCS/TRACS.”
- 2. Upon completion of the transfer, iREMS is updated to reflect the changes made to the projects, including the information from the Appendices.

If you have any questions regarding this Notice, please contact your local HUD Field Office or your Desk Officer in the Office of Asset Management.

IX. Findings and Certifications

A. Information Collection

The information collection requirements contained in this document are 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 numbers 2502-0587 and 2502-

0182. In accordance with the Paperwork Reduction Act, 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.

B. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50.19(c), which 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 between 8 a.m. and 5 p.m. weekdays 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, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Carol J. Galante
Assistant Secretary for Housing -
Federal Housing Commissioner

Appendices

[Appendix One](#) -- New Regulation Part 880 Section 8 HAP Contract – Parts I and II. If a PHA is the contract administrator for the State in which the project is located, the PHA must execute the Part 880 Section 8 HAP Contract. However, the Hub/PC must ensure that HUD has transferred budget authority to the Part 880 HAP Contract *before* the Owner and the Contract Administrator execute it. Forms HUD-52522a and HUD-52522b.

[Appendix Two-A](#) -- Amendment to Contract A1 whereby Owner A and the contract administrator agree to a reduction in the number of units covered by Contract A1 and Owner A agrees to comply with the requirements of (i) the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5 Subpart G, (ii) the Physical Condition of Multifamily Properties of 24 CFR Part 200 Subpart P, and (iii) the Uniform Financial Reporting Standards of 24 CFR Part 5 Subpart H. If a PHA is the contract administrator for the State in which the project is located, the PHA must execute the Amendment. Form HUD-93185a.

[Appendix Two-B](#) -- Amendment to Contract B whereby Owner B and the contract administrator agree to an increase in the number of units covered by Contract B and Owner B agrees to comply with the requirements of (i) the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5 Subpart G, (ii) the Physical Condition of Multifamily Properties of 24 CFR Part 200 Subpart P, and (iii) the Uniform Financial Reporting Standards of 24 CFR Part 5 Subpart H. If a PHA is the contract administrator for the State in which the project is located, the PHA must execute the Amendment. Form HUD-93185b.

[Appendix Three](#) -- Preservation Exhibit.

[Appendix Four](#) -- Matrix: Requirements for Section 8 HAP Contracts

[Appendix Five](#) -- Steps for Establishing a New Section 8 Contract under Section 8(bb) in PAS/LOCCS/TRACS.



Frequently Asked Questions on Transferring Budget Authority under Section 8(bb)(1)

March 14, 2016

(Supersedes the FAQs published on February 18, 2016)

BUDGET NEUTRALITY

1. How does HUD determine the maximum number of units that can be placed on the contract at Property B? **REVISED March 14, 2016**

Response: 8(bb) transfers must be “budget neutral.” “Budget neutrality” means that the annual gross rent potential (GRP) for Property B may not exceed the annual GRP for units terminating at Property A. (Note: in this context GRP does not include the utility allowance.) Budget neutrality may result in either an increase or decrease in units placed on the contract at Property B as compared to those being terminated at Property A, if the average rents for the properties differ.

Note that for Property A, GRP is determined based on current PBRA contract rents for all contract units being terminated through the 8(bb). For Property B, GRP is determined based on market rents as established by an RCS. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents. For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS.

The sample calculation below illustrates how to use GRP to size units at Property B and demonstrate budget neutrality of the transfer (numbers are for illustrative purposes only).

| Unit Sizing and Budget Neutrality Demonstration | | | | | |
|---|--|---------|-------|-------------|----------------|
| | | Rents | Units | Subtotal | Total |
| Property A: Gross Rent Potential | | | | | |
| A | Current monthly GRP for all contract units at Property A | | | | \$101,250.00 |
| | GRP - 1 Bedrooms (\$870 per month X 50 units) | \$870 | 50 | \$43,750.00 | |
| | GRP - 2 Bedrooms (\$1150 per month X 50 units) | \$1,150 | 50 | \$57,500.00 | |
| B | Annual GRP at Property A (Line A X 12 months) | | | | \$1,215,000.00 |
| C | Number of Contract Units at Property A | | | | 100 |
| Property B: Initial Estimate of Units | | | | | |
| D | Monthly GRP for Property A units at Property B market rents, by unit type | | | | \$100,775.00 |
| E | GRP - 1 Bedrooms | \$900 | 48 | \$43,200.00 | |
| F | GRP - 2 Bedrooms | \$1,175 | 49 | \$57,575.00 | |
| G | Annual GRP for units terminating at Property A using Property B market rents (Line D X 12) | | | | \$1,209,300.00 |
| H | Budget Neutrality Indicator (Line G/Line B) | | | | 99.5% |
| | <i>Size the units at Property B so the budget neutrality indicator is 100% or less</i> | | | | |
| I | Estimated Number of Units for Property B (Line E + F) | | | | 97 |

Note: The final number of units at Property B may differ from this estimate if there is a change in the mix of unit types from Property A to Property B. This is acceptable so long as total GPR for Property B does not exceed GPR for Property A. To continue our example, a combination of 38 one-bedroom units and 57 two-bedroom units can be accommodated at Project B within the annual GRP of \$1.215M (or Budget Neutrality Indicator of 99.9%), for a total of 95 units.

(continued on next page)

Using the GRP at Property A and Property B, field offices must submit a unit sizing and budget neutrality calculation worksheet with the 8(bb) request for review by headquarters. A template for the calculation will be provided to HUD field staff. The demonstration of an equivalent or reduced GRP at Property B will satisfy the requirements of the Notice to demonstrate that the remaining budget authority being transferred from Property A is sufficient to fund the proposed number of units at Property B (See Sections III.E and VIII.A.5 of the Notice).

UNIT SIZING AND TRANSFER OF BUDGET AUTHORITY

2. *How do I “size” the transferring number of units when there are multiple Property Bs?*

Response: In a one-to-many transfer, the GRP for the “many” should be calculated on a gross basis, i.e., combining all Property Bs to ensure that the gross GRP does not exceed the GRP at Property A. Next, the gross GRP is divided among the “many” according to the proposed units and unit types at each property. A unit sizing and budget neutrality calculation worksheet will be provided to field offices to assist with this calculation.

3. *What are “budget authority” and “remaining budget authority” and how is remaining budget authority related to the sizing of number of units at Property B?*

Response: In this context, budget authority is a commitment to fund 12 months of subsidy at Property A. Remaining budget authority is 12 months of (calendar year) budget authority for Property A, less amounts expended/vouchered for during the calendar year at the time of the transfer. Remaining budget authority will often be greater than the balance reflected in LOCCS, as a full year of funding may not have been obligated to Contract A in the accounting system.

Remaining budget authority is not related to sizing the number of units that may be added at Property B. As discussed in FAQ 1, Gross Rent Potential is relied on to size the number of units that can be supported by the transfer and to demonstrate budget neutrality as required by the Notice. Gross Rent Potential less tenant contributions is used to impute the total annual budget authority needed for housing assistance payment to Property A and Property B.

The field office is not required to submit the amount of remaining budget authority on Contract A as part of its 8(bb) approval request to headquarters, since the number continually changes as vouchers are submitted. Only the unit sizing and budget neutrality demonstration is required (see FAQ 1).

4. *What does “within the lesser of five percent or five units” in Section V.D, paragraph 3, mean? **NEW March 14, 2016***

Response: As the Notice states, “the number of units supported by the budget authority at Project B should be substantially the same...as the number of units supported by the budget authority at Property A.” The threshold of “within lesser of five percent or five units” means that no reduction can exceed 5 units. This means that for projects with 100 terminating units or more, the unit reduction is always limited at 5. For projects with fewer than 100 terminating units, the 5% threshold will be the limitation (e.g., 95×0.05). If the reduction exceeds the threshold, the request must be supported with additional documentation indicating a material improvement in location or a market-driven need to reconfigure unit types, as detailed in section V.D of the Notice.

8(bb) transfer Scenario 1:

Project A's budget authority funds 130 units
5% of 130 is 6.50 units
The reduction in units cannot be more than 5

8(bb) transfer Scenario 2:

Project A's budget authority funds 28 units
5% of 28 is 1.4 units (rounded up)
The reduction in units cannot be more than 2

5. ***The current notice states in paragraph III.B that the Notice applies only when the contract administrator and Owner A have mutually agreed to “terminate the Contract so that all of the remaining budget authority can be transferred to another multifamily housing project.” Do we take this literally to mean all the budget authority?***

Response: No, this does not literally mean that all budget authority has to be transferred to a single project in order to obtain Departmental approval. OAMPO will only allocate the necessary budget authority.

6. ***Can the field approve a small transfer of budget authority?***

Response: No, Headquarters must approve all transfers.

7. ***Is there a minimum threshold for transfer of budget authority?***

Response: No.

RENTS

8. ***What contract rents should I use for the 1-day/amended contract at Property B? What if the rents at Property B are above-market?***

Response: Use market-level rents for Property B as established by an RCS. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents. For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS.

HUD will not approve Property B **above-market** contract rents as part of an 8(bb) transfers. Market rate units may be added to an existing **Option 4** contract where rents are above market, but there must be a separate rent schedule for the new market rate 8(bb) units. Owners with projects that currently have an Option 4 renewal and/or are considering renewing under Option 4 must submit an RCS as a part of the 8(bb) application in order to establish the market rent.

9. ***Can an owner increase rents under Option 1 or Option 2 when renewing the one-day/amended contract?***

Response: No. While the one-day/amended contract can reflect an increase in rents, the 8(bb) MAHRA renewal rents cannot be another increase over the one-day/amended contract rents. The one-day/amended contract rents and the 8(bb) MAHRA renewal rents must reflect the market rents determined at the time of sizing.

TENANTS AND RELOCATION

10. ***Do there need to be available non-subsidized units at Property B for all tenants in Property A who wish to move? **NEW March 14, 2016*****

Response: The number and type of contract units at Property B must accommodate all Property A tenants wishing to relocate to Property B. Tenants can be “over-housed” at Property B to accommodate all tenants who decide to move until an appropriate unit type becomes available.

CONTRACT EXPIRATIONS, TERMINATIONS, AND OPT-OUTS

11. If Owner A is willing, can we renew a contract that has expired (even up to several years ago) in order to facilitate the 8(bb) transfer, as long as the remaining funds have not been swept? A related question is whether we can renew a contract if all the tenants have already been issued, or are about to be issued, TPVs?

Response: No to both questions. To execute an 8(bb) transfer, Contract A must not be allowed to expire. Before Contract A expires, execute a short-term renewal under Chapter 2 of the Section 8 Renewal Guide to protect the tenants. Furthermore, there is a presumption in the Notice that HUD has made a determination that the 8(bb) transfer is in the best interest of the tenants. The Notice also provides that tenants will have the option of moving to Project B or receiving a TPV. Field offices must initiate the 8(bb) transfer process with sufficient advanced-planning so these choices are available for tenants.

12. Is it mandatory to renew Project A's existing contract for a short term if the 8(bb) transfer has not yet been approved before the expiration date of the current HAP contract?

Response: Yes, the contract must have a short-term renewal to remain an existing contract and be subject to the Notice. Once the contract expires, it is no longer an active contract. The Notice only addresses the transfer of budget authority from an existing, active HAP contract.

13. The owner of one of the properties in my portfolio has indicated he/she may opt out at the end of the one-year contract. What should I do? **NEW March 14, 2016**

Response: One option is to offer the Owner the opportunity to terminate the contract early in exchange for their participation in the 8(bb) transfer of subsidy process. One year should provide sufficient time to complete the 8(bb) process and avoid the need to execute a short-term renewal of Owner A's contract.

ENVIRONMENTAL REVIEW

14. If the owner prepared a Phase I ESA for his project three years ago, is a new one needed?

Response: If a Phase I ESA is required as part of the 8(bb) transfer, then yes. According to Section 9.3.A.1.c. of the 1/29/2016 MAP Guide, "The Phase I ESA must be conducted (meaning the earliest of the date of the site visit, records review documents, or interviews) within one-year of the submission to HUD. HUD may require updates or additional analysis in specific circumstances. A Phase I ESA that was conducted more than 180 days prior to the submission date to HUD, but within the allowable one year period, must be updated pursuant to Section 4.6 of ASTM E 1527-13. A Phase I ESA prepared more than one year prior to submission to HUD, even if updated within 180 days of being submitted, is not acceptable."

15. What is HUD's stance on using an environmental review from another agency, for example Rural Development?

Response: If a review has been prepared for a HUD project by another agency, those documents should be requested and used to the extent possible. However, HUD must conduct its own environmental analysis and prepare its own environmental review, and HUD will be responsible for the ultimate findings and determinations. See 24 CFR 50.35. HUD would use the other agency's review of the site for reference, and ask the applicant to submit new or updated documentation and reports as needed.

PD&R REVIEW

16. Has a point of contact with PD&R [Field Economist] for an 8(bb) review been established?
REVISED March 14, 2016

Response: The Field Economists are located in Philadelphia, Atlanta, Chicago, Oklahoma City, Ft. Worth, Denver, Los Angeles, San Francisco and Seattle.

17. Do the Field Economists need to know details about current tenants in order to demonstrate demand for additional affordable housing? **REVISED March 14, 2016**

Response: Details on current tenants such as their names and ages are not necessary. Field Economists will review the following in determining demand for additional affordable housing: (1) market analysis showing there are eligible families in the area; (2) the number of current tenants and/or prospective tenants on the waiting list at Project A who are eligible for Section 8 assistance and intend to relocate to Project B; and (3) the number of prospective tenants on the waiting list at project B who are eligible for Section 8 assistance.

REAC SCORES AND INSPECTIONS

18. Can an inspection from another State or Federal Agency (such as Rural Development) be used in lieu of a REAC inspection for an 8(bb) Property B? **NEW March 14, 2016**

Response: At this time there are no other Federal agencies that conduct UPCS inspections on behalf of HUD. Some State Housing Finance Agencies (HFAs) that participate in the Physical Inspection Alignment Pilot Program have had their inspectors become UPCS certified through the Department's certification program. These inspectors must use HUD's inspection software (4.0), and upload the inspection to REAC so that it is evaluated and scored before it is released to the owner. The HFA inspectors that are UPCS certified conduct inspections on behalf of HUD in cases where there is an overlap in state and federal assistance programs. For instance, if a project has both LIHTC and a Section 8 HAP contract both HUD and the HFA may be obligated to conduct a physical inspection at that project. The Physical Inspection Alignment Pilot is an attempt to eliminate the duplication of inspections by having one party conduct the inspection using a protocol (UPCS) that is acceptable to both parties and then sharing the result. When an HFA conducts the inspection as part of the pilot they pay for the inspection.

19. How do we submit another agency's inspection to REAC for evaluation and scoring? **NEW March 14, 2016**

Response: If the individual doing the inspection has completed the required training and is certified to complete the inspection, the Department will issue them the equipment and software to enable them to upload the inspection results directly into the REAC system. More detailed information about the certification process and the software can be found on the REAC website at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/prodpass/dcd4.0

20. For new construction and Property Bs that are not HUD-affiliated, can the REAC inspection be ordered before the 8(bb) is submitted (since it takes some time for a REAC inspection to be conducted)? **NEW March 14, 2016**

Response: No. If the 8(bb) application is otherwise approvable, you will receive a conditional approval of the 8(bb) transfer from Headquarters, requiring that a REAC inspection be ordered. If the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD.

21. How is a REAC inspection requested, especially when there is no record in iREMS for Project B yet? *NEW March 14, 2016*

Response: The first step is for the Branch Chief to create a “dummy” project in iREMS. This can be done by using the “project add” feature and inputting the name and address of Project B in iREMS and the assigned Account Executive. The Branch Chief should also use the Servicing Screen tab to show that the project has an active use agreement. This will make the project “Active” so that REAC-PASS will be able to generate an inspection ID. The Branch Chief will notify the Physical Inspection Coordinator in the region about the request, and must remember to later mark the use agreement as terminated, whether the 8(bb) transfer goes through or not.

The second step is to send Brandt Witte, in HQ-OAMPO, the following information regarding Project B:

- Project name
- Address
- Number of buildings
- Number of units
- Owner and management agent contact information
- Copy of the Commitment from Property B to receive PBCA budget authority

This information will be passed on to REAC-PASS so that an inspection can be scheduled with the owner/agent. A date can normally be scheduled within 2-3 weeks of receipt of this information.

22. Would HUD consider waiving the requirement in Section VI. C., paragraph 1, that requires a REAC inspection and score above 60 if Project B is not a HUD-Affiliated property before the transaction? *NEW March 14, 2016*

Response: No we would not. We would follow the process outlined in FAQ 21.

23. In the case where Project B is a new construction project developed under an FHA mortgage program, i.e. Section 221(d)(4), can the HUD-executed Permission to Occupy be used to determine the units meet HUD’s physical condition standards in lieu of a REAC inspection, allowing the transfer to proceed? *NEW March 14, 2016*

Response: Yes, the HUD-executed Permission to Occupy is sufficient to allow the transfer to proceed, and the project will begin its regular cycle REAC inspections from the date of final endorsement.

24. Does Section V.C., paragraph 4, which discusses curing of deficiencies in Project A if it will continue to be HUD-Affiliated, only apply if the project has a below 60 score? *NEW March 14, 2016*

Response: Yes, if the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD. If the score is 60 or above, then the owner only has to correct any exigent health and safety (EHS) deficiencies within three business days.

25. If Property B becomes due for a REAC inspection during the 8(bb) process (e.g., between the submission and approval steps), is this new inspection required? *NEW March 14, 2016*

Response: Yes. The 8(bb) process does not stop the clock on the required REAC inspection schedule. There must be an up-to-date inspection with a score of 60 or above (or Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies) to approve the 8(bb) transfer. Projects that score between 90 -100 must be inspected at least once every three years. Projects that score from 80-89 must have an inspection at least once every two years. And projects with a score of 79 or below must have an inspection at least once a year.

THIRD-PARTY AGREEMENTS

26. *If an owner is uninterested in participating in an 8(bb) transfer, can HUD step in and execute the transfer?*

Response: Under the current notice, 8(bb) transfers require mutual agreement from both Owner A and Owner B. If the owners do not mutually agree to the terms of an 8(bb) transfer, any remaining budget authority will be recaptured after contract termination.

27. *Can an owner sell their HAP contract?*

Response: HUD is not involved in third-party agreements.

If you have a question about Transferring Budget Authority under Section 8(bb)(1), please submit it to 8BBor214questions@hud.gov