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## Overview of Public Housing Relocation Options

This document addresses frequently asked questions (FAQs) pertaining to project-basing as a relocation tool. The first step in the relocation process that is the subject of this document is removal of a project from the public housing program pursuant to an approval by HUD's Special Applications Center (SAC).<sup>1</sup> In some cases, SAC approval triggers eligibility for Tenant Protection Vouchers (TPVs), which may be project-based under certain conditions; in other cases, PHAs must project-base their own vouchers as part of a relocation strategy.

The SAC processes PHA requests to remove projects from the public housing program via the following removal tools: a Section 18 demolition/disposition ([Notice PIH 2018-04](#)); a Section 22 Streamlined Voluntary Conversion (SVC) ([Notice PIH 2019-05](#)); a Section 33 mandatory conversion ([Notice PIH 2019-10](#)); or a retention under 2 Code of Federal Regulations (C.F.R.) Part 200 ([Notice PIH 2016-20](#)). The requirements for project-basing differ depending on which SAC removal tool a PHA selects and how the TPV and/or PBV requirements come into play.

## Project-Basing TPVs: General

### 1. Which SAC approvals trigger PHA eligibility for TPVs?

Refer to "[Tenant Protection Vouchers \(TPVs\) for Public Housing Actions](#)."

### 2. The above-linked document describes relocation and replacement TPVs. May a PHA project-base both types of TPVs?

No. As stated in Section 6.A of Notice PIH 2018-09,<sup>2</sup> relocation TPVs are tenant-based assistance and cannot be project-based. Relocation TPVs are provided as a temporary resource and "sunset" as the families to whom they are issued leave the voucher program.<sup>3</sup> Whether replacement TPVs may be project-based depends on the public housing action as described later on in this document. In all cases where the TPV may be project-based, the PHA must comply with the Project-Based Voucher (PBV) statute<sup>4</sup> and all PBV program requirements.<sup>5</sup>

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<sup>1</sup> A project may also be removed from the public housing program through HUD's Rental Assistance Demonstration (RAD); such removals are governed by the RAD Notice ([Notice PIH 2019-23](#)) and are not therefore addressed in this document.

<sup>2</sup> This same standard is adopted in the 2019 and 2020 implementation notices, respectively Notices PIH 2019-08 and 2020-04, which reference Section 6 of Notice PIH 2018-09.

<sup>3</sup> From Consolidated Appropriations Act, 2019 (P.L. 116-6) and Further Consolidated Appropriations Act, 2020 (116-94): "Any tenant protection voucher made available from amounts under this paragraph shall not be reissued by any public housing agency, except the replacement vouchers as defined by the Secretary by notice, when the initial family that received any such voucher no longer receives such voucher, and the authority for any public housing agency to issue any such voucher shall cease to exist."

<sup>4</sup> Section 8(o)(13) of the U.S. Housing Act of 1937 (1937 Act or Act) (42 U.S.C. 1437f(o)(13))

<sup>5</sup> See, for example, 24 C.F.R. Part 983 and Notice PIH 2017-21.

## Project-Basing TPVs: SAC Removal Tool Differences

### 3. In what way do the requirements for project-basing differ based on which SAC removal tool a PHA selects?

When the SAC approves a public housing removal using one of the available tools described in the section above titled “Overview of Public Housing Options,” that approval will come with certain requirements that are typically spelled out in the SAC approval letter. A PHA that will project-base TPVs awarded pursuant to a SAC approval must comply with these requirements in addition to complying with PBV program requirements. For example, if the SAC approves a disposition at below fair market value, and the property being disposed of will continue to be used as affordable housing, then the SAC is likely to require recordation of a use restriction. Even though recordation of a use restriction is not a PBV program requirement, it will be required if the PHA project-bases TPVs at the property.

Some of the other differences among the removal tools are summarized below:

- **Section 18 Demolition/Disposition.** Section 18 of the 1937 Act, which requires a PHA to provide a family with “comparable housing,”<sup>6</sup> does not impose limitations (in contrast with Section 22 of the Act for example) on a PHA’s authority, under Section 8(o)(13) of the Act, to project-base HCV assistance awarded in connection with the Section 18 action. Therefore, a PHA may project-base the TPV assistance at a former public housing unit if the unit complies with PBV program requirements (for example, the unit must meet HUD’s Housing Quality Standards (HQS) at HAP contract execution). In this case, the PHA may project-base the TPV assistance without the family’s consent to relinquish the TPV assistance in favor of a PBV-assisted unit. The PHA must, however, offer the family the opportunity to reside in the PBV unit funded through the TPV.<sup>7</sup>
- **Section 22 Streamlined Voluntary Conversion.** The statute and HUD regulations provide that if a project (or portion of a project) will be used as rental housing following a Section 22 approval, then each family residing in the project may remain in its dwelling unit with tenant-based assistance (e.g., tenant-based TPV assistance).<sup>8</sup> The unit must still independently meet applicable HCV requirements for a family to be able to use the tenant-based voucher in the family’s current unit. Additionally, based on this tenant-based provision, there is no statutory or regulatory right to provide PBV assistance to the project.

However, per PIH 2019-05, if a PHA wishes to project-base the TPVs at a project that has been approved for a Section 22 SVC, then the PHA must first obtain the informed written consent of

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<sup>6</sup> 42 U.S.C. 1437p(a)(4)(A)(iii)(III)(bb)

<sup>7</sup> In order to receive a TPV, the family must be income-eligible for admission to the voucher program (i.e., must be a low-income family). In order to use the TPV in the unit, the family’s occupancy of the unit must be consistent with the subsidy standards of the voucher agency that administers the PBV HAP contract.

<sup>8</sup> 42 U.S.C. 1437t(d)(4)(C) and 24 C.F.R. §972.230(g)(4)(ii)(E).

each family to relinquish its tenant-based TPV in order to be assisted in a unit<sup>9</sup> under a PBV HAP contract at the project.<sup>10</sup>

- **Section 33 Required Conversions.** The statute and HUD regulations provide that if a project (or portion of a project) will be used as rental housing following a Section 33 approval, then each family residing in the project may remain in its dwelling unit with tenant-based assistance (e.g., tenant-based TPV assistance).<sup>11</sup> The unit must still independently meet applicable HCV requirements for a family to be able to use the tenant-based voucher in the family's current unit.

Given this tenant-based provision, there is no statutory or regulatory right to provide PBV assistance to the project and HUD determined, in PIH 2019-10, that it would be inappropriate for a PHA to enter into a long-term PBV HAP contract at a project that has met the regulatory and statutory criteria of 24 C.F.R. Part 972 and Section 33 of the 1937 Act for severely distressed housing. A PHA may project-base the assistance on the same site only if current buildings are demolished and new housing is constructed, and then only if the site complies with all PBV program requirements, including the new construction site and neighborhood standards.<sup>12</sup>

#### **4. If the family is ineligible for PBV assistance, because the family's TTP exceeds the PBV contract rent, what must the PHA do?**

The scenario presented is one in which a family happens to be zero-HAP at admission to the PBV program but not at admission to the HCV program. A PHA will know whether the family is zero HAP at admission to the HCV program once the PHA processes the family's initial request for tenancy approval. A family in this scenario must be offered tenant-based TPV assistance. The family may use such tenant-based assistance to remain in the unit, provided the unit is approvable under HCV program requirements<sup>13</sup> (including that the family doesn't pay more than 40 percent of its adjusted income toward rent).<sup>14</sup> <sup>15</sup> Alternatively, the family may use the tenant-based TPV assistance to relocate. In this case, the PHA may then PBV the unit using its regular HCV allocation, provided it meets the requirements specific to the public housing conversion action and all applicable PBV requirements.

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<sup>9</sup> The family's occupancy of the unit must be consistent with the subsidy standards of the voucher agency that administers the PBV HAP contract.

<sup>10</sup> The PHA must follow the instructions in Appendix A of Notice PIH 2019-05 in obtaining a family's consent.

<sup>11</sup> 42 U.S.C. 1437z-5(d)(2)(C) and 24 C.F.R. §972.130(b)(4)(ii)(E)

<sup>12</sup> 24 C.F.R. §983.57(e)

<sup>13</sup> 24 C.F.R. Part 982

<sup>14</sup> 24 C.F.R. §982.305. The owner is not required but may choose to reduce the rent to assure that the family's TTP is at or below 40 percent of its adjusted income.

<sup>15</sup> If the PHA is the owner of the property, the PHA is not required, but may, rent the current unit to the family. If the PHA rents the current unit to the family, the PHA must follow PHA-owned requirements at 24 C.F.R. §982.352(b) (see also Notice PIH Notice 2017-21, Attachments A and B).

**5. If a family is over-income for admission to the PHA's HCV program and therefore ineligible to receive TPV assistance, may the PHA project-base the TPV assistance? (Updated 9/9/2020)**

It depends. Under all public housing actions, the PHA is required to offer "comparable housing"<sup>16</sup> to an impacted family, irrespective of whether such family is income-eligible for a TPV. If the PHA can relocate the family using a form of comparable housing other than the TPV, the PHA could use the TPV to PBV the unit.<sup>17</sup> If there is no other comparable housing option to relocate the family, the PHA may meet its comparable housing requirement by leaving the family in place unassisted at a comparable rental rate.<sup>18</sup> In this case, instead of using the TPV to project-base the unit, the TPV may be used for families on the PHA's waiting list.

**6. May a PHA project-base the TPV assistance if the family residing in the unit would be over-housed according to the PHA's subsidy standards?**

A PHA may not establish subsidy standards for its PBV program that differ from those of its HCV program; it must follow its HCV policy on family unit size.<sup>19</sup> A family may not occupy a PBV-assisted unit if the family would be over-housed, per the PHA's subsidy standards.

Under both Section 18 and Section 22, if a family wishes to remain in the project under a PBV HAP contract, and the PHA is able to move the family to an appropriately sized unit in the project (a unit that was vacant at the time of SAC approval) that will be included in the PBV HAP contract, then the PHA may do so and may attach TPV assistance to the original unit. Otherwise:

- In the case of a Section 18 disposition, the PHA may relocate the family using a form of comparable housing other than the TPV, then use the TPV to PBV the unit. If there is no other form of comparable housing, then the PHA may leave the family in place unassisted at a comparable rental rate. In this case, instead of using the TPV to project-base the unit, the TPV may be used for families on the PHA's waiting list. The PHA's description of the disposition in its PHA Plan<sup>20</sup> must make clear how it proposes to address such "over-housed" families.
- In the case of a Section 22 conversion, the PHA must offer the TPV to the family in the form of tenant-based assistance. The family then has a choice:
  - If the family's current unit complies with HCV program requirements, then the family may remain in the unit with the tenant-based TPV assistance. The payment standard for the overhoused family will be based on the number of bedrooms for which the family is

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<sup>16</sup> Section 18: 24 C.F.R. §970.21(a); Section 22: 24 C.F.R. §972.230(g)(4)(ii); and Section 33: 24 C.F.R. §972.130(b)(2)(ii).

<sup>17</sup> In the case of a Section 22 conversion, there would be no need to obtain the family's consent to project-base the TPV because the family is ineligible for that TPV.

<sup>18</sup> Under this option, the unit may be considered an assisted unit, and excluded from rent reasonableness determinations (24 CFR §983.303), in accordance with notice PIH 2020-19.

<sup>19</sup> 24 C.F.R. §982.402(b)-(c)

<sup>20</sup> 24 C.F.R. §970.7(a)(1)

eligible.<sup>21</sup> The family may not pay more than 40 percent of its adjusted income toward rent.<sup>22</sup> The PHA may not project-base the TPV assistance.<sup>23</sup>

- If the family's current unit does not comply with HCV requirements, then the family may use the tenant-based TPV assistance to move to a unit that complies with HCV program requirements, in which case the PHA may PBV the unit using its regular HCV allocation, provided all applicable PBV requirements are met.
- If the family chooses another form of comparable housing (e.g., a public housing unit in another of the PHA's projects), then the PHA may relocate the family to that unit and project-base the TPV assistance at the original unit.

As with the Section 18 disposition example, a PHA's conversion plan<sup>24</sup> must address its policies with respect to over-housed families.

## TPVs and Voucher Management System Reporting<sup>25</sup>

### 7. How do PHAs report TPVs in HUD's Voucher Management System (VMS)?

Refer to "[Tenant Protection Vouchers \(TPVs\) for Public Housing Actions](#)" for general information concerning reporting of TPVs in VMS. The following question provides additional details concerning TPV reporting when the TPV is project-based.

### 8. How is a TPV reported in VMS if the TPV assistance is project-based?

- If the TPV is used by the affected family (the affected family resides in the unit that has been project-based with the TPV), then the PHA will report the unit on the "Tenant Protection Vouchers" line, in addition to reporting it under the appropriate PBV field.
- If the TPV is not used by an affected family (e.g., the PHA uses the TPV to project-base a unit that was vacant at the time of SAC approval but that had been occupied by a HUD-assisted family within the previous 24 months), then the PHA will report the unit on the "All Other Vouchers" line in VMS, in addition to reporting it under the appropriate PBV field.

## Project Basing: Existing Housing

### 9. What is the PBV definition of "existing housing"?

Under the PBV program, a project meets the definition of "existing housing" only if all of the proposed PBV units in the project "substantially comply" with HUD's HQS on the proposal selection date.

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<sup>21</sup> 24 C.F.R. §982.402(c)

<sup>22</sup> 24 C.F.R. §982.305

<sup>23</sup> Under HCV requirements, an owner may decide not to rent a unit under the program (24 C.F.R. §982.302(b)). The affected family's right to tenant-based TPV assistance under Section 22 however overrides the owner's ability under HCV requirements to decide against renting the unit to the affected family.

<sup>24</sup> 24 C.F.R. §972.130(a)

<sup>25</sup> Refer to the [VMS User's Manual](#) for comprehensive reporting requirements. A separate [Quick Reference](#) guide contains field definitions and some other reporting information.

## 10. What does it mean to “substantially comply” with HQS?

HUD does not define what it means for a project to “substantially comply” with HQS; the PHA has the discretion to establish reasonable standards for determining whether units substantially comply with HQS in its Administrative Plan. Irrespective of the PHA’s definition, all proposed PBV units must comply fully with HQS before the PHA may execute a PBV Housing Assistance Payment (HAP) contract, unless the PHA has adopted either (or both) of the HQS flexibilities authorized under the Housing Opportunities Through Modernization Act of 2016 (HOTMA).<sup>26</sup>

## 11. How much time is permitted between the inspection to confirm that units fully comply with HQS and execution of the PBV HAP contract?

A PHA has the discretion to establish this timeframe and must state its policy on the timeframe in its Administrative Plan. Because the PHA may not sign a HAP contract for a unit that does not fully comply with HQS (unless the PHA has adopted either (or both) of the HOTMA HQS flexibilities), the timeframe should leave as little time as possible between the inspection and the date on which the HAP will be signed, taking into account that any HQS deficiencies will need to be repaired.

## 12. What is the “proposal selection date”?

In awarding PBVs to a project, a PHA must follow the PBV proposal selection procedures,<sup>27</sup> unless the project meets the criteria for noncompetitive selection under HOTMA. The proposal selection date will be the date on which the PHA issues a notice to the party that submitted the selected proposal.<sup>28</sup>

## 13. Can the PHA execute the HAP while the units are still public housing, or must the PHA wait to do so until after the units have been removed from the public housing DOT/ACC?

PBV assistance may not be attached to a public housing project.<sup>29</sup> Since the HAP contract is a formal commitment to attach PBV assistance to a project, the property must be removed from the public housing inventory and released from DOT prior to execution of the HAP contract.

## Competitive and Noncompetitive Selection

## 14. Do the TPVs that will be project-based need to be awarded competitively?

Unless the project meets the HOTMA criteria for noncompetitive selection, the voucher agency that receives the award of TPVs must follow the PBV proposal selection procedures.<sup>30</sup>

## 15. What are the criteria for noncompetitive selection under HOTMA?

A project meets the criteria for noncompetitive selection under HOTMA only if the voucher agency that will administer the PBV HAP contract has an ownership interest in the project or has control

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<sup>26</sup> Notice PIH 2017–20

<sup>27</sup> 24 C.F.R. §983.51

<sup>28</sup> 24 C.F.R. §983.51(d)

<sup>29</sup> 24 C.F.R. §983.54(a)

<sup>30</sup> 24 C.F.R. §983.51



over the project at the time of selection and the other conditions for noncompetitive selection, as explained in [Notice PIH 2017–21](#), Attachment L, are met.

**16. Does an independent entity need to review a PHA’s noncompetitive selection of a PHA-owned project?**

Yes. The requirement is that the HUD field office or a HUD-approved independent entity must review “the selection process.”<sup>31</sup>

**17. If a PHA is engaged in an initiative to replace public housing and the replacement project will be on a different site from the former public housing project, may the PHA make a noncompetitive selection of the replacement project?**

Yes. Neither HOTMA nor HUD in its implementation of this provision has limited replacement housing to the same site as the former public housing project.<sup>32</sup>

**18. Does a PHA need to expend \$25,000 per unit on rehabilitation or new construction in order to meet the criteria for noncompetitive selection, or may that threshold be met via averaging?**

The requirement to expend \$25,000 per unit may be met via averaging. For example, a PHA may spend nothing on half of the units and \$50,000 per unit on the other half.

**19. For how long must a PHA have an ownership interest in a project in order to take advantage of HOTMA’s noncompetitive selection provision? In other words, does the provision merely require that the PHA have an ownership interest until HAP contract execution, at which point the PHA could give consent for the ownership structure to change to remove the PHA from ownership?**

To be eligible for the HOTMA noncompetitive selection provision, the PHA must have an ownership interest at minimum from the time of selection through the execution of the PBV HAP contract. Any transfer of ownership after that point is permissible only if the original transaction was a bona fide transaction. The PHA’s ownership interest must have been a legitimate ownership and not merely a means to circumvent the competition requirement.

**20. Our not-for-profit affiliate recently received an award of 9 percent Low Income Housing Tax Credits (LIHTCs). That award included no consideration of PBVs. We would like to dispose of some vacant land to our affiliate and award PBVs to the affiliate so that it can build the LIHTC project and include PBV-assisted units. In this case, can we make the selection based on the previous competition and take initial steps to PBV the units (e.g., environmental review, SLR) before we dispose of the land?**

There are two questions here. One of the questions is whether a PHA may select a project for an award of PBVs based on a previous competition where the entity that will receive the award is not (yet) the project owner. Generally, the answer is no. In this case, however, the PHA is the owner of the land, the not-for-profit affiliate is controlled by the PHA, and the disposition of the land will be to the not-for-profit affiliate. The selection in this case is permissible, because the PHA is and will remain the owner (in the form of its not-for-profit affiliate). Essentially, the PHA is selecting a PHA-owned project. As such, an independent entity must review the selection process.

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<sup>31</sup> 24 C.F.R. §983.51(e)

<sup>32</sup> Notice PIH 2017–21, Attachment L



Another question has to do with the timing of work. While the environmental review and subsidy layering review may be completed following the selection, the Agreement to enter into a Housing Assistance Payments (AHAP) for this new construction project may not be executed prior to disposition, because a PHA may not make a formal commitment (which the AHAP constitutes) to attach PBV assistance to a public housing project.<sup>33</sup> For purposes of a Section 18 demolition/disposition, public housing includes non-dwelling property, such as vacant land, that has been operated or maintained with public housing funds.<sup>34</sup> This means that the vacant land is considered “public housing” until HUD approves the disposition.

**21. As part of its repositioning strategy, a PHA plans to purchase an existing property to which it plans to attach PBV assistance. The property will be competitively selected for PBVs. Can the PHA issue an RFP prior to purchasing the property and submit a proposal as the future owner of the property?**

No. The proposal must be submitted by the actual owner of the project. There are two potential options in the specific example to explore:

- a. The current owner may submit the proposal. If the current owner is selected, then the current owner may enter into the PBV HAP contract and transfer the project and contract to the PHA’s owner entity, consistent with the contractual provision governing such transfers. The project must be treated as PHA-owned for purposes of all independent entity requirements (including the requirement that the selection be reviewed by HUD or an independent entity to determine the selection was appropriate<sup>35</sup>).
- b. The current owner may provide a bona fide ownership interest to the PHA (such that the PHA can lease the units per 42 USC §1437f(f)(1)<sup>36</sup>) prior to the RFP and prior to purchase. The PHA may submit the proposal once it meets this definition of “owner.” If the proposal is selected, the PHA may purchase the project at any time after selection and prior to HAP contract execution (for an existing project; prior to AHAP if rehabilitation is planned). The project must be treated as PHA-owned for purposes of all independent entity requirements (including the requirement that the selection be reviewed by HUD or an independent entity to determine the selection was appropriate).

## Public Housing–Only Agencies

**22. May a public housing–only (Section 9–only) PHA administer the PBV HAP contract for a project that converts to PBV (Section 8) assistance pursuant to a SAC approval<sup>37</sup>?**

No. The PH–only agency must partner with a voucher agency that is authorized under state law to administer voucher assistance in the geographic location in which the former public housing

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<sup>33</sup> 24 C.F.R. §983.54(a)

<sup>34</sup> Notice PIH 2018–04, paragraph (1)

<sup>35</sup> 24 C.F.R. §983.51(e)

<sup>36</sup> Statutory definition of an “owner” for purposes of the section 8 program: “the term ‘owner’ means any private person or entity, including a cooperative, an agency of the Federal Government, or a public housing agency, having the legal right to lease or sublease dwelling units.”

<sup>37</sup> See Notice PIH 2019–23 for requirements specific to public housing–only agency conversions to PBV pursuant to RAD.

project is located. The voucher agency will apply for and administer the TPVs awarded in connection to the PH action. The voucher agency must either have or establish a PBV program, and it must follow all PBV program requirements in administering the assistance. If the PH-only agency retains ownership of the project, it will essentially function as a landlord.

**23. If a PH-only agency has established a site-based waiting list for a public housing project that it is converting to Section 8, must the voucher PHA that will administer the PBV HAP contract merge the existing waiting list with its own waiting list?**

The voucher PHA is not required to merge the PH-only PHA's site-based waiting list<sup>38</sup> into its voucher waiting list. Rather, the voucher PHA has discretion about whether to transfer the waiting list and how to do so. In terms of the options available to the voucher PHA, PBV program requirements<sup>39</sup> provide for the operation of site-based, PBV-based, or HCV-wide waiting lists. So, for example, the voucher PHA could establish a site-based waiting list for the PBV project and transfer families from the one list to the other. The voucher PHA may also transfer families on the waiting list for the former public housing project to a PBV program-wide or an HCV program-wide waiting list. The voucher PHA must explain in its Administrative Plan how it intends to exercise its discretion, stating whether it will transfer the waiting list and how.

If the voucher PHA will not transfer the families on the waiting list of the former public housing project to a waiting list that it administers, then it could invite such families to apply for admission to its own public housing program (if it has one) or voucher program. The voucher PHA may also establish a preference for the admission of such families.<sup>40</sup> If the waiting list for the voucher program is closed, then the voucher PHA may open its waiting list for the purpose of accepting such families as applicants.<sup>41</sup> The voucher agency, if it operates a public housing program, could also open its public housing waiting list to such families.

Many of these families may have been on the waiting list for public housing for years. In seeking to identify a voucher PHA to administer its PBV HAP contract, HUD suggests that a PH-only agency discuss with each voucher PHA its plans for serving waitlisted families. If the voucher agency that will administer the PBV HAP contract has no plans to serve families who were on a site-based waiting list for the former public housing project and the PH-only agency has other public housing properties, then the PH-only agency will follow its Admissions and Continued Occupancy Policy and may merge those persons onto the PHA waiting list (unless the other waiting lists are site-based only). The PH-only agency has no obligation to the waitlisted families if the PH-only agency is terminating its public housing program.

**24. If a PH-only PHA retains full ownership of a repositioned project, does the project qualify as PHA-owned under the PBV program rules?**

No. Under the PBV program, a project is PHA-owned if the voucher agency that administers the PBV HAP contract holds a controlling interest in the owner entity.

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<sup>38</sup> 24 C.F.R. §903.7(b)(2)

<sup>39</sup> 24 C.F.R. §983.51

<sup>40</sup> 24 C.F.R. §960.206(a) and 24 C.F.R. §982.207(a), respectively

<sup>41</sup> 24 C.F.R. §982.206(c)

**25. In the case of a PH-only PHA, can the PHA/owner provide the voucher agency with an ownership interest in the project while the units are still public housing so that the project will meet the criteria for noncompetitive selection under HOTMA?**

No. The concern here is that a PH-only agency will partner with a voucher agency, which will then receive the award of TPVs. If the voucher agency is then required to award the TPVs for project-basing through the PBV proposal selection procedures, it could come to pass that the PBVs are awarded to a project other than the PH-only agency's project. To obviate such an outcome, and if the voucher agency has good cause to expect that such an outcome is possible, the voucher agency may request a good-cause waiver of the PBV proposal selection procedures in order to award the PBVs directly to the PH-only agency's project. In determining whether good cause exists to approve such a waiver, HUD is likely to consider whether the voucher agency could have selected the project for an award of PBVs based on a previous competition.<sup>42</sup>

**26. A PH-only PHA plans to transfer ownership of the project to its affiliate Limited Liability Company (LLC) simultaneously with the SAC approval. The PHA plans to provide a membership in the LLC to the voucher agency that will administer the PBVs. Can the voucher agency make a noncompetitive selection under HOTMA before it has a membership in the LLC?**

No. The exemption from competitive selection applies only to the PHA that will administer the PBV HAP contract, and then only if that agency has an ownership interest in the project at the time of selection. In addition, steps to project-base the units (such as inspections, environmental review, subsidy layering review) cannot proceed until after the selection.

### PBV HAP Contract

**27. If our agency will both own the project and administer the PBV HAP contract, then do we sign the PBV HAP contract as both owner and administrator?**

A voucher agency that owns a project for which it will administer PBV assistance may not sign as both the owner and administrator. The voucher agency will sign as the administrator. Another entity must sign as the owner. The voucher agency has options for resolving this issue. One option is to have a separate legal entity own the project (e.g., a not-for-profit affiliate). Another option that allows the voucher agency to retain ownership of the project is for the voucher agency to enter into an agreement with a separate entity that has the authority under state law to lease the project's units. For example, the voucher agency could create a new entity or enter into an agreement with an existing entity that has the authority under state law to lease the project's units and then enter into a contract with that affiliate. In this example, the voucher agency would sign as the contract administrator, and the affiliate would sign as the owner.

**28. If the same person is the responsible official with authority to sign contracts at both the PHA and the owner entity (PHA's not-for-profit entity), can the same person sign for the PHA and the owner in the person's respective capacity for each entity?**

The contract is between the two entities and not between the individuals with signing authority. The two entities must be distinct legal entities. If the same person who has signing authority for the

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<sup>42</sup> 24 C.F.R. §983.51(b)(2)

PHA also has signing authority for the ownership entity, and the two entities are distinct legal entities, then the same person may sign for the PHA and the owner entity.

## New Construction/Rehabilitation

### **29. Can the PHA execute the AHAP while the units are still public housing, or must the PHA wait to do so until after the units have been removed from the public housing DOT/ACC?**

PBV assistance may not be attached to a public housing project.<sup>43</sup> Since the AHAP is a formal commitment to attach PBV assistance to a project, the property must be removed from the public housing inventory and released from DOT prior to execution of the AHAP.

### **30. Do the HOTMA program and project cap exemptions described in Notice PIH 2017–21, Attachment F, apply if the PHA wants to provide replacement PBVs offsite?**

No. In order to benefit from the HOTMA exemptions described in Attachment F, the newly constructed units must be located on the same site as the units they are replacing. As described in Attachment F, an expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project qualifies as the same site as long as a majority of the replacement units is built back on the site of the original development, and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.<sup>44</sup> Note that newly constructed units located offsite may be excepted from either the program cap or the project cap or both if they fall under an exception category described in Attachment D or E, respectively.

## PBVs and PHA Annual Plan

### **31. A PHA that intends to project-base vouchers must describe its plans in its PHA Annual Plan.<sup>45</sup> What is the requirement for Qualified PHAs, which are exempt from the requirement to submit a PHA Annual Plan?**

Each qualified PHA must annually hold a public hearing regarding any changes to the goals, objectives, and policies of that agency and invite public comment regarding such changes. The qualified PHA must also consult with and consider the recommendations of the resident advisory boards for the agency at the public hearing. At least 45 days before the date of the public hearing, the PHA must:

- Make all information relevant to the hearing and any determination of the agency regarding changes to the goals, objectives, and policies of the agency to be considered at the hearing, available for inspection by the public at the principal office of the PHA during normal business hours.

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<sup>43</sup> 24 C.F.R. §983.54(a)

<sup>44</sup> Notice PIH 2017–21, Attachment F, paragraph (1)(c)(ii)(I)

<sup>45</sup> Section B.2 of Annual PHA Plan (form HUD-50075-ST; form HUD-50075-SM; form HUD-50075-HP; form HUD-50075-HCV)

- Publish a notice informing the public (1) that the information to be reviewed during the public hearing is available, and where and when they may inspect the information, and (2) of the date, time, and location of the public hearing.

**32. If a PHA is required to submit an Annual PHA Plan but wishes to use the PBV program before the anticipated approval date of its next PHA Plan, what must the PHA do? For example, consider a voucher agency that will take over the administration of a PBV HAP contract for a PH-only agency that is repositioning its public housing.**

If a PHA is required to submit an Annual PHA Plan, then it must wait to launch a PBV program until after its PHA Plan has been approved by HUD. If a PHA wishes to use the PBV program before the anticipated approval date of the PHA’s next PHA Plan, then it may do so by adding the information as an amendment to its PHA Plan and following the regulations and notices for such PHA Plan amendments.<sup>46</sup>

## PBV General

**33. In the HCV program, a PHA must verify applicant eligibility within 60 days before issuing a voucher to the applicant. What is the timeframe for determining applicant eligibility for admission to a PBV-assisted unit?**

A PHA may select only families who are eligible for admission at the commencement of PBV assistance.<sup>47</sup> The PBV regulation does not provide a specific timeframe for the PHA’s eligibility determination. HUD would consider 60 days prior to the commencement of PBV assistance to be reasonable, consistent with the HCV approach.<sup>48</sup>

**34. What options are available to a PHA that wants to maximize its PBV rents?**

The PBV rent amount must be determined by the PHA in accordance with PBV regulations at 24 C.F.R. Subpart G. PHAs looking to maximize PBV rents may consider the factors described below; however, under no circumstances may the initial rent to owner exceed the lower of the reasonable rent or the rent requested by the owner<sup>49</sup>:

- The applicable FMR:
  - PHAs may determine the amount of the PBV rent, up to a maximum of 110 percent of the applicable FMR minus the utility allowance (UA).<sup>50</sup> If the PHA is a voluntary or mandatory adopter of Small Area FMRs (SAFMRs) and has opted to apply SAFMRs to its PBV program, then the “applicable” FMR will be the SAFMR.<sup>51</sup>

<sup>46</sup> 66 FR 3608 (January 16, 2001); 24 C.F.R. §903.21

<sup>47</sup> 24 C.F.R. §983.251(a)(2)

<sup>48</sup> 24 C.F.R. §982.201(e)

<sup>49</sup> 24 C.F.R. §983.301(b)–(c)

<sup>50</sup> 24 C.F.R. § 983.301(b)(1)

<sup>51</sup> 24 C.F.R. § 888.113(h)

- A PHA can request reevaluation of the applicable FMR in the time permitted with each year's publication.<sup>52</sup>
- If the project is located in an area covered by an exception payment standard (median rent, 40th percentile rent, or SAFMR method), then the maximum PHA-determined rent is the exception payment standard minus the UA.<sup>53</sup> An exception payment standard would allow a PHA to set the PBV rent higher than 110 percent of the FMR, up to the level of the exception payment standard.
- LIHTC-financed project:
  - If the unit is located in a tax credit project that meets the criteria of 24 C.F.R. §983.301(c)(1), then the maximum rent is the tax credit rent minus UA (which may exceed 110 percent of the applicable FMR).<sup>54</sup>
  - If the unit is located in a tax credit project that does not meet the criteria of 24 C.F.R. §983.301(c)(1), then the PHA may pay the section 8 rent (not to exceed 110 percent of the applicable FMR) even if it is higher than the amount that would be permitted under the tax credit rent.<sup>55</sup>

## PBVs and Section 18

### 35. Under Section 18, a PHA must dispose of the project to a separate legal entity. Does this have ramifications for project-basing?

It depends on the nature of the PHA's ownership interest in the entity to which the project is disposed. For example, if the voucher agency that will administer the PBV HAP contract holds a controlling interest in the owner entity,<sup>56</sup> then the voucher agency must procure the services of an independent entity to perform certain functions related to its ownership and management of the project.<sup>57</sup> If, on the other hand, the voucher agency holds a direct or indirect ownership interest in a project, or in an entity that owns the project, but the voucher agency's interest is noncontrolling, then the voucher agency is not required to procure the services of an independent entity to perform such functions.

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<sup>52</sup> 24 C.F.R. § 888.115

<sup>53</sup> 24 C.F.R. §§ 982.503(c), 983.301(b)(1)

<sup>54</sup> 24 C.F.R. §983.301(c)(2)(i)

<sup>55</sup> 24 C.F.R. §983.301(d)

<sup>56</sup> [Notice PIH 2017-21](#), Attachment A

<sup>57</sup> [Notice PIH 2017-21](#), Attachment B

### **36. If a family chooses to remain in the project with tenant-based assistance, can we add the family's unit to the PBV HAP contract when the family moves out?**

Units may be added to an existing PBV HAP contract at any time during the term of the contract without being subject to competitive selection procedures.<sup>58</sup> Note that any units added to the contract will count against the PHA's program and project caps, unless they units meet the criteria for exemption<sup>59</sup> or fall under one of the HOTMA exception categories.<sup>60</sup>

## Traditional PBVs in RAD Covered Projects

### **37. What is a "Covered Project" for purposes of eligibility of non-RAD units for RAD waivers?**

A Covered Project is defined in the RAD Notice as "the post-conversion property with assistance converted from one form of rental assistance to another under the Demonstration." RAD waivers apply to non-RAD PBV units that are part of a RAD Covered Project only if such waivers are explicitly provided in the RAD Notice. An explicitly provided waiver will contain a statement such as "any non-RAD PBV units located in the same Covered Project shall be subject to the terms of this provision," which appears, for example, in several of the provisions in Section 1.6.C of the RAD Notice, "PBV Resident Rights and Participation."

### **38. If a PHA converts 100 public housing units under RAD and then develops 10 new construction traditional PBV units on a vacant portion of land that is part of the RAD "Covered Project," are the 10 traditional PBV units exempted from the program cap<sup>61</sup> (i.e., percentage limitation) by virtue of being part of the RAD "Covered Project"?**

No. The 10 units would not be covered by the RAD exception to the program cap. As discussed in the response to the previous question, in order for the 10 non-RAD PBV units to be exempted from the program cap, the RAD Notice would need to provide an explicit waiver of the program cap for such units. The RAD Notice does not provide such a waiver. However, such units could be excluded from the program cap, or could be part of an increase to the program cap, if they qualify under any of the other program cap exceptions (see Attachments D and F of Notice PIH 2017–21).

### **39. If a PHA converts 100 public housing units under a RAD/Section 18 blend, which will result in 75 former public housing units under a RAD PBV HAP contract and 25 former public housing units under a traditional PBV HAP contract, do the 25 traditional PBV units count against the program cap?**

Yes. The 25 traditional PBV units are exempt from the program cap in this case, because they were assisted under the public housing program within the previous 5 years.<sup>62</sup>

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<sup>58</sup> Notice PIH 2017–21, Attachment J

<sup>59</sup> Notice PIH 2017–21, Attachment F

<sup>60</sup> Notice PIH 2017–21, Attachments C–E

<sup>61</sup> 24 C.F.R. §983.6

<sup>62</sup> Notice PIH 2017–21, Attachment F