

8 (bb)(1) of the United States Housing Act: Preservation Wonder Pill or Fraught with Peril?

8 (bb)(1) of the USHA states that any remaining budget authority under a Section 8 contract shall be transferred to provide assistance to eligible families receiving project-based assistance at the time of contract termination, under the terms and conditions prescribed by HUD.

- Notice H-2015-03 (April 3, 2015) provides the first glimpse of detailed instructions from HUD to housing providers and advocates on how this works.
- Before Notice H-2015-03, how (bb) was administered/granted/denied was governed by the local HUD offices.
- Grumblings of problems with this notice – may see revisions soon.

How It Works:

- **SENDING OWNER MUST DEVELOP THE PLAN:** “Sending” owner (current owner who has the pbs8 contract) applies to HUD to transfer the contract (“budget authority”) to another development:
 - Can propose to break up the contract and send to more than one development;
 - Sending owner comes up with plan for where to move it, not HUD;
 - Can only be sent to units without existing project-based assistance;
 - sending owner/receiving owner can be the same;
 - Units to receive the pbs8 contract must be in existence and ready for occupancy on the day HUD transfers the contract (**so can propose to send contract to units to be built but units must be built and ready to be occupied on date on transfer/only receive conditional approval**);
 - For partial preservation, application must show why there is a need for only a portion to be preserved and why there will be no adverse impact on the long term preservation of the project or the tenants affected by the transfer;
 - For transfer from HUD insured projects, must show there is no adverse financial impact due to the loss of the contract;
 - **ALL** applications, partial or full, must demonstrate that **there will be no adverse impact to the existing assisted tenants as a result of the transfer**;
 - **ALL applications must include a Relocation Plan.**
- **LOCATION, LOCATION, LOCATION:**

- **Receiving project/s must show that there is a demand for affordable housing and that the transfer will meet that need and long term preservation of the project;**
 - **must show waitlists and eligible households in receiving project's area;**
 - **must undergo environmental review;**
 - **receiving owner must have a satisfactory civil rights record;**
 - must be in same state unless receive HUD approval
 - must be consistent with HUD's civil rights obligations (segregation).
 - neighborhood not seriously detrimental to family life, where substandard housing or conditions predominate, unless active effort to overcome it.
 - Housing accessible to social, recreational, educational, commercial, and health facilities, similar in characteristics to neighborhoods with mainly market housing
 - **NEW CONSTRUCTION ONLY:** cannot be located in racially mixed area if project will significantly increase minority residents and cannot be located in area of minority concentration (unless show adequate and comparable opportunities in non-minority areas, including integration by voucher holders, and project necessary to meet housing needs of area)
 - Receiving project must be accessible
 - **IF HUD-affiliated,** receiving project must have acceptable Management Reviews and REACs or show corrective action plans approved by HUD.
 - **If Non-affiliated,** receiving project must have a REAC inspection and receive a minimum score of 60. Detailed repair plan attached if repairs are needed.
 - Receiving project cannot involuntarily move existing tenants out of its development to make way for the transferred tenants – incentivizing, natural attrition may be legal however.
- **INFORMATION TO THE TENANTS ABOUT THE PROPOSED TRANSFER:**
 - Notice to tenants of the proposed transfer issued **PRIOR TO** application to HUD – notice must be translated if other languages and be accessible to persons with disabilities;
 - **TENANT CONSULTATION:** 30 day comment period upon notice of the transfer;
 - HUD will not accept the (bb) application without proof of tenant notice and consultation and certification;
 - Notice mailed to each tenant and posted in the common areas;
 - Provide Contact Information for local HUD person;
 - **TENANTS AND THEIR LEGAL OR OTHER REPRESENTATIVES** have a right to inspect and copy the materials that the owner is to submit to HUD for 30

days; tenant comments must be available in sending owner's office during normal business hours for reading and copying.

- Sending Owner must hold a meeting with the tenants and legitimate tenants organizations to discuss the details of the notification and answer questions;
 - Sending owner must respond in writing to all tenant comments and questions and provide that evaluation to HUD – “Any negative comments must be addressed.”
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- **CONTRACT TERM: Contract must be renewed for 20 years; then automatically renew for at least the number of years remaining on the contract pre-(bb) transfer.**

 - **RELOCATION OF TENANTS:** Both owners responsible for relocation and the owners decide between themselves who will pay for it and who will do it.
 - TENANTS DO NOT PAY FOR RELOCATION;
 - TENANTS COVERED UNDER THE URA, which means they receive advance notice of relocation, help with moving, and assistance with utility hook-ups;
 - TENANTS can elect not to move with the contract and take A TENANT PROTECTION VOUCHER (CHA- STILL HAVE TO QUALIFY);
 - LEGAL QUESTION ON VOUCHER TYPE;
 - UNCLEAR when tenants would make this choice and how much time they have to make it and if they could change their mind;
 - TENANTS who move to new project have to renegotiate house rules and other policies (i.e., pet policy) – not a requirement that they stay the same.