

Calendar of Events:

**HDLI General
Counsel's Forum
January 20, 2006
Quorum Hotel
Tampa, Florida**

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HUD ANNOUNCES COMPREHENSIVE CHANGES TO PROJECT-BASED VOUCHER PROGRAM

By Lisa Walker Scott

HDLI Executive Director & General Counsel

More than a year and a half after the initial notice of rulemaking, on October 13, 2005 HUD's PIH Office published its Final Rule with comprehensive changes to its Section 8 Project-Based Voucher Program (PBV Program). *See* 70 FR 59892 *et seq.* No. 197 (10/13/05). The Final Rule amends PBV program regulations found at 24 CFR part 983 and supersedes a January 2001 guidance on the PBV Program (66 FR 3605). These revised regulations attempt to eliminate the necessity for HUD approvals, exceptions and waivers during the development process, and generally provide for more PHA discretion and autonomy in administering PBV programs. The Final Rule becomes effective November 14, 2005. This article highlights many of the key provisions of the Final Rule but is not intended to be exhaustive. You are encouraged to review the Final Rule with your local counsel to determine

the total impact of the new regulations on your individual programs. All citations in this article refer to 24 CFR, unless otherwise noted.

General Overview of the Project-Based Voucher Program¹

Congress created the project-based voucher housing program in 1998 as part of the statutory merger of HUD's pre-existing tenant-based and project-based assistance programs that had been in existence for decades. This was made possible by section 545 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), legislation that significantly changed the administration of public housing and Section 8 programs. After Congress made a number of changes to the PBV program in 2000 and again in its FY 2001 Appropriations Act, in 2001 HUD published a Federal

Register notice with guidance on how to implement the changes. 66 FR 3605. This Final Rule supersedes the 2001 guidance.

Each year, HUD appropriates money for each PHA participating in HUD's tenant-based voucher program. Public housing and redevelopment agencies (collectively, PHAs) use this pool of funds to pay for both tenant-based vouchers (your typical portable "Section 8 voucher") as well as the acquisition, development or rehabilitation of hard units that will receive on-going Section 8 subsidies, known as project-based units. PHAs use part of the allocation to pay the cost of administering the programs. Thus, project-based assistance attaches to a specific structure or hard unit, and tenant-based assistance is portable to any qualifying hard unit.

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¹ HDLI's membership consists of persons new to the public housing arena. Accordingly, my articles are written with background for the benefit of such persons. I appreciate the indulgence of our more seasoned public housing practitioners. Feel free to skip to page 3 to avoid the program background information.

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A Letter from the Executive Director and General Counsel

Fall is here and HDLI continues to move and transform like the leaves in the trees. HDLI's 22nd Annual Fall Conference entitled "*Moving Toward Independence: Legal Strategies for Surviving With Less Dependence on HUD*" was held in Chicago on October 10th and was a resounding success! With HUD funding continuing to decrease, the focus of the conference was on alternative strategies for funding your operational and developmental goals and the legal successes and pitfalls that often ensue in pursuing these options. If you were not able to attend the Fall Conference this year, reasonably-priced conference materials are available for purchase using the enclosed order form.

Project-Based Voucher Rule

Most of this issue is devoted to HUD's recent issuance of its Final Rule containing comprehensive changes to its Project-Based Voucher (PBV) Program. You will find that the Final Rule, which becomes effective November 14, 2005, vests PHAs with more autonomy and discretion in operating their PBV programs. While the Final Rule leaves some operational issues unanswered, it goes further in addressing many of the issues that previously plagued the program.

Don't Miss HDLI's 2006 General Counsel's Forum: January 20, 2006

Do you want to get a jump start on tackling pending issues in the New Year? I extend a personal invitation to attorneys, either working inside a PHA's general counsel's office, or working for outside firms and functioning in a GC

role, to attend HDLI's upcoming **General Counsel's Forum** taking place January 20, 2005 at the Quorum Hotel and Conference Center in Tampa, Florida. Your agency's attorneys should take part in this one-on-one roundtable to discuss and brainstorm on current hot legal and operational topics that PHAs are facing *right now*. This is an opportunity for counsel to meet and better get to know colleagues whose agencies have faced, or are facing, similar tough legal and operational issues. The program leaves ample room for you to bring your particular concerns to the group, but also addresses specific timely issues such as surviving asset management, protecting PHAs' remaining eminent domain powers, and managing conflicts of interest and important relationships. This type of forum is extremely advantageous for exchanging viable solutions to current problems, and we have priced the program to enable every size PHA to send a representative(s). Please make sure that the attorneys representing your agency know about this unique opportunity. You will find a program and registration form in this issue.

Have a Wonderful Fall and Continue to Stay in Touch Through HDLI's List Serve!



HUD ANNOUNCES COMPREHENSIVE CHANGES.... Cont'd

Under both the tenant and project-based voucher programs, the total rent payable to the landlord consists of the tenant's share (based upon his or her income) and the remaining share paid by the government (the subsidy). The family is not responsible to the owner for the portion of the rent covered by the subsidy, and the landlord cannot terminate the tenant's lease if the PHA fails to pay the subsidy. Likewise, the PHA is not responsible for paying the tenant portion of the rent, for damages to the unit, or for any other claim by the owner.

Under the PBV program, there are constraints as to how much money may be designated for project-based assistance, how many project-based units can occupy a particular building, and what sites may be chosen for project-based units. A PHA may designate up to 20% of its tenant-based voucher appropriation to be used for project-based rental assistance. Except for units designated for families that are elderly, disabled, or receiving qualifying supportive services, no more than 25 percent of units in a particular building may receive project-based voucher assistance. Sites chosen for the PBV program and receiving PBV assistance must meet the goal of deconcentrating poverty and expanding housing and economic opportunities.

Existing housing that is ready to rent, as well as newly constructed or rehabilitated housing, are all eligible for project-based assistance, as long as they meet the requirements of the PHA's administrative plan. A PHA sets forth the procedures for evaluating and selecting owners and units in its administrative plan. The PHA is responsible for ensuring that the proposals it is considering meet HUD program regulations and requirements, including whether the family occupying the unit is eligible and

whether the unit qualifies.

Once an owner is chosen, in order for his/her units to begin receiving project-based assistance, the owner and the PHA enter into a housing assistance payment (HAP) contract. Even though the assistance payments come from HUD, there is no separate contract between the owner and HUD. The PHA administers the PBV program for HUD. Under QHWRA, a PHA could enter into a housing assistance payments (HAP) contract for consecutive one-year terms up to 10 years, subject to availability of appropriated funds. Now, initial terms may be up to 10 years. As described below, the Final Rule also extends renewal terms. During the term of the HAP contract, the PHA uses money allocated from HUD to make housing assistance payments directly to the owner for the units listed in the HAP contract that actually are occupied by eligible families. Vacant units are not funded, unless the PHA has approved a vacancy payment. The PHA has discretion to continue vacancy payments to the owner for up to 60 days. If a family living in a PBV unit later becomes ineligible for the program, the unit will not be funded. In these cases, the PHA will provide the family with other assistance to move, often a tenant-based Section 8 voucher, and another eligible family can move into the unit.

After 12 months of living in a project-based unit, a family may move from the unit using a tenant-based voucher program or other comparable assistance, if available.

The amount of rent payable under a HAP contract also is strictly regulated. Generally, project-based voucher rents may not exceed the lower of the "reasonable rent," as determined by the PHA and HUD, or 110% of the applicable Fair Market Rent (FMR) (or any exception payment standard approved by HUD). This limit applies both to the initial rent and rent adjustments over the term of the HAP contract. The amount of rent includes an allowance for tenant-paid utilities. The Final Rule makes no changes

or clarifications to utility allowances, so PHAs continue to consider their own local circumstances in setting utility allowances. Assistance for some types of tax credit buildings are handled separately. *See* 42 U.S.C. 1437f(o)(13)(H).

Finally, both the tenant and project-based voucher programs are reserved for poor families. Accordingly, admission of families to the PBV program is subject to an "income-targeting" requirement. At least 75 percent of the families admitted to the PBV program each year must have annual incomes below 30 percent of median income for the area.

Important Elements of the Modified PBV Program

Application of tenant-based program regulations. Sections 983.2, 983.3. With certain important exceptions not discussed herein, the part 982 regulations applicable to the tenant-based voucher program also apply to the PBV program. The Final Rule also describes where part 983 regulations that differ from part 982 take precedence. For instance, HUD has determined that Section 982.503 (determinations of the tenant-based voucher program payment standard) that authorize a higher payment standard as a reasonable accommodation for persons with disabilities does *not* apply to the PBV program because the payment standard amount does not affect the availability of a PBV unit. Additionally, some terms defined in the tenant-based voucher program under part 982 take on different meanings in the PBV program. The differences are described in Section 983.3.

20%, 25%, and other caps. Sections 983.6, 983.56, 983.257. PBV assistance is restricted to 20% of a PHA's tenant-based voucher budget authority. Section 983.6(a). However, a PHA is *not* required to reduce the number of PBV units should the budget authority subsequently be reduced. *Id.*

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PBV units for which the PHA has issued a notice of proposal selection and those under a HAP contract are subject to the 20% cap. Section 983.6(b).

There also is a 25% cap on the total number of units receiving project-based assistance in any given building. Under the Final Rule, more units can now receive PBV assistance, as now the 25% cap applies to the total units in the building and not just the unassisted units, as previously was the case. Certain types of units are excepted from the 25% cap. They are: units in a single family building, units housing the elderly and families with disabilities, and units resided in by families with at least one family member receiving *any type* of supportive services that the PHA specifies as "qualifying services" in its administrative plan. With regard to the latter exception, previously, only units with families participating in a family self sufficiency (FSS) program were exempt.

In the case of current alcohol or drug abusers, while a PHA may offer medical or disability-related services (other than drug and alcohol treatment) to such abusers, it can not force participation as a condition of living in an excepted unit. At the time of initial lease execution, the family and the PHA must sign a statement of family responsibility containing all family obligations, including social services, and it is *the PHA's responsibility* to monitor the family's continued participation in the social services program as set forth in the PHA's administrative plan. If a family fails to complete the qualifying services program, their assistance *must* be terminated and such is grounds for the landlord to terminate the lease. Sections 983.257(c), 983.56(b). If the unit is an excepted unit, it continues to be excepted if it is made available to another qualifying family.

In addition to the 20% and 25% caps, PHAs have discretion to create other caps that will reduce concentration. For example, the PHA could establish a per-building cap in buildings with excepted units, establish a per-building cap of less than 25%, and/or determine not to provide PBV assistance for excepted units. See Section 983.56(c).

Administrative Fees, Generally.

Commenters on the proposed rule argued that PHAs currently are restricted to receiving a lower administrative fee than private owners, and have to use those fees to contract for increasingly expensive services. They argued that PHAs should be entitled to a higher administrative fee. Rejecting this argument in the Final Rule, HUD noted that the 1937 Act authorizes HUD to decrease the administrative fees for PHA-owned units, and stresses that private owners are not reimbursed for certain costs for which PHAs are reimbursed, such as income certification and reexamination.

Prohibited Actions.

Section 983.251(e)(3). The Final Rule sets forth a laundry list of prohibited actions by a PHA against an applicant who has applied for, received, or been refused an offer of PBV assistance. PHAs may not: 1) refuse to put the applicant on the tenant-based waiting list; 2) deny any admission preference for which the applicant is currently qualified; 3) change any of the factors affecting selection under the PHA's selection policy, such as the applicant's place on the waiting list, preference, date or time of application; or 4) remove the applicant from the tenant-based waiting list.

Co-mingling funds impermissible.

The Notice makes clear that, generally, it still is not permissible to combine public housing and PBV funds. Among other arguments, commentators argued that QHWRA changed the definition of public housing to include units in a mixed-finance project that receive capital or operating assistance so commin-

gling should be permitted. In response, the Final Rule clarifies that, in some circumstances, PBV assistance may be combined with HOPE VI funds. In the case of pre-FY 2000 HOPE VI funds, the only case where they may be combined with PBV funds is where they are not used to either develop or operate public housing units. Note that HOPE VI funds appropriated on or after FY 2000 are deemed "public housing funds" and cannot in any case be combined with PBV funds. However, the Final Rule clarifies that the use of PBV assistance in mixed-finance projects that are not classified as ineligible is authorized.

Rent. Sections 983.3, 983.301, 983.302, 983.354. Rent to the owner is established at the beginning of the HAP contract. The Final Rule adopts a fair market rent (FMR)-based payment standard where rents are determined based upon the most recently published FMRs and utility allowance schedule. The Final Rule standard differs from that of the proposed rule which would have been based on the PHA's payment standard schedule. HUD states that this is because it wanted to promote landlord participation by minimizing the prospect of PHAs reducing payment standards and corresponding rents. Section 983.301(f).

Rent to the owner must not exceed the lowest of 110% of FMR (or other approved exception rent), the reasonable rent, or the rent requested by the owner. Section 983.301(b). Rent must be redetermined at the owner's request or whenever there is a 5% or greater decrease in the published FMRs. Sections 983.203, 302. The owner must request any rent increase, in writing, at the annual HAP contract anniversary date.

Meals and supportive services generally may not be charged as part of the rent to the owner, and nonpayment of such charges cannot serve as grounds for termination. However, the HAP payment may not be used

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for the costs of meals and supportive services. The exception is for assisted living developments. Section 983.354.

The Final Rule also provides specific examples of non-housing services that cannot be included in rent. 983.3.

Admissions and screening. Sections 983.251, 983.253, 983.255. PHAs decide what families may receive PBV assistance. The PHA may select families who applied to both its tenant-based voucher and PBV programs and are on those waiting lists. Families must be determined eligible at the time that PBV assistance is scheduled to begin. Owners are limited to selecting families that have been referred from the PHA waiting list. 983.253(a).

The Final Rule makes clear that owners *must* have written tenant selection (including screening) procedures; previous language stated that owners “may” apply their own admissions standards. Sections 983.255(b), 983.253(a)(2). The owner’s standards must comply with those listed in Section 983.255(b)(2)(i)–(v). On the other hand, PHAs have no obligation to, but “may,” screen applicants for family behavior and suitability, and the PHA may deny assistance based on its screening. Section 983.255(a).

Prohibited family relationships: spouse. Section 983.209. A spouse is now among the list of prohibited family relationships between the owner and residents of the PBV unit.

Disabilities. Section 983.251(d). The Final Rule gives PHAs discretion to grant a preference to families with persons with disabilities that require the services offered at a particular site in order to maintain themselves in housing. The PHA cannot,

however, force a disabled person to accept said services. PHAs are free to advertise a project as being for a particular type of disability, but must allow persons with any type of disability who could benefit from the service to live there.

Limited English Proficiency (LEP). Section 983.252(d). HUD has developed a new regulation requiring PHAs to take reasonable steps to assure meaningful access for people with limited English proficiency.

Accessibility. Section 983.102. PBV units must comply with the accessibility requirements of Section 504 and HUD’s implementing regulations at 24 CFR part 8, subpart C and 24 CFR 100.205. Units constructed after March 13, 2001 also must comply with the Fair Housing Amendments Act.

Disclosure of tenant information. Section 983.255(c). The Final Rule makes clear that a PHA must provide an owner with landlord contact information (if available) for any prior address (not just the immediately prior) and information relating to drug trafficking by family members. Appropriate policy disclosures must be made to the family.

PHA waiting lists. Section 983.251. The Final Rule gives PHAs the discretion to create project-specific waiting lists. A PHA may maintain separate waiting lists for its tenant-based and PBV programs, or may combine waiting lists. 983.251(c)(2). If separate, the PHA must offer to place tenant-based wait listed families on the PBV waiting list. A PHA also may use separate waiting lists for PBV units in individual projects or buildings, or may use a single waiting list for the PHA’s whole PBV program. 983.251(c)(3). Income-targeting applies to the waiting list: Section 983.251(c)(6) provides that not less than 75% of families admitted to a tenant-based and project-based voucher program during a fiscal year *from a PHA’s waiting list* shall be

extremely low income families.

In-place families. Section 983.251(b). The Final Rule also provides priority on the waiting list for families in-place at the time of demolition of a unit participating in the PBV program. It requires that in-place families be placed on the PHA’s waiting list with an *absolute preference* for the next available unit. Section 983.251(b)(2). The in-place family must be eligible on the proposal selection date; however, they are not subject to income-targeting and must be referred to the owner from the waiting list. *Id.*

PHAs also may give preferences to the homeless and for persons with disabilities who can benefit from the services available at the project.

HAP contracts. Sections 983.203, 983.205. HAP contracts can have an initial term of up to ten (10) years for each contract unit. Section 983.203(a) provides that the term cannot be less than one year, however. Section 983.203 specifies the form and contents of HAP contracts. Some PHAs were unclear as to whether the HAP contract requires that each unit be specifically identified in the HAP contract. The Final Rule makes clear that “the location of each contract unit” must be identified in the HAP contract. 983.203(c).

Substitution of units. Section 983.206. Some PHAs have been unclear as to whether the HAP contract has to be amended in order to substitute covered units. The Final Rule makes clear that substitutions of new units with the same number of bedrooms *in the same building* may take place within 3 years of the execution of the HAP contract, but the HAP contract must be amended to specify the new unit(s). However, before that happens, the PHA must inspect the new unit and determine rent reasonableness. The 25% cap on units

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in a particular building, and the overall 20% cap on budget authority continue to apply. Additionally, the new units assume the old units' anniversary and expiration dates. 983.206(b). There is always a single anniversary and expiration date for all units under a HAP contract, regardless of whether the units originally were placed under the HAP contract in stages.

Extensions/renewals of HAP contracts. Section 983.205(b). The Final Rule sets forth new provisions regarding renewals of HAP contracts. Provided adequate funds are available, HAP contracts may now be renewed for terms up to 5 years (rather than just 1 year), and subsequent extensions are permitted. However, commentators were unsuccessful in advocating for PHA discretion in deciding the length of the HAP contract renewal up to the length of the initial term.

Terminations of HAP contracts for financial reasons. Section 983.205(c). PHAs may terminate HAP contracts for, *inter alia*, insufficient funding. Either HUD may determine that there is insufficient funding, or the PHA may so determine in accordance with HUD instructions. The PHA has discretion to terminate assistance for all or some of the units in a given HAP contract. Likewise, an owner has the right to terminate a HAP contract whenever the rent is reduced below the amount of the initial rent at the beginning of the contract term. 983.205(d). In this case, the PHA has to provide the family with tenant-based assistance.

Leases. Section 983.256. The Final Rule makes clear that a tenant must have legal capacity to enter a lease under both state and local law. 983.256(a). With regard to lease terms, commenters proposed to allow

lease terms to be less than 1 year. Like HAP contract terms, this was rejected in the Final Rule. Section 983.256(f). Leases must now specify the amount of any charges for food, furniture, or supportive services. Section 983.256. The Final Rule also makes clear that leases must comply with state and local law.

Lease termination. Leases cannot be terminated without good cause as contemplated in 24 CFR 257(b). Exceptions are under 24 CFR 982.310(d)(1)(iii) and (iv) and the eviction provisions of 24 CFR 5.858-5.861. Section 983.257. HUD has elaborated that good cause does not include a business or economic reason or desire to use the unit for personal, family, or non-residential rental purposes. If an owner fails to renew a lease and does so without good cause, the PHA must provide the family with comparable tenant based assistance (not enhanced vouchers), and must remove the unit from the HAP contract. Section 983.257(b)(3). But in order to receive tenant based assistance, tenants must have lived in a project based unit for 12 months.

Ineligible housing types. Sections 983.9, 983.53, 983.54. PBV assistance may not be provided for owner-occupied units. Section 983.53(c). There is a long list of other housing types that may not receive PBV assistance. They are: shared housing; cooperative housing; manufactured homes; shared homes; cooperative housing; transitional housing; homeownership; those on the grounds of penal, reformatory, medical, mental, or similar public or private institutions; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care; and units designated for students that are owned or controlled by an educational institution or its affiliate. However, PBV assistance may be provided to assisted living facilities that provide home health care services, such as nursing and therapy. Section 983.53(a)(3).

Subsidy layering. Sections 983.4, 983.54, 983.55. PHAs may not provide PBV assistance to units with the following types of subsidy: public housing; any other Section 8 subsidy; any governmental rent or operating cost subsidy; Section 236 subsidy (except Section 236 interest reduction subsidy); rural housing subsidy (Section 521) (except for Section 515 interest reduction subsidy); Section 202 subsidy for the elderly and non-elderly disabled; Section 811 subsidy for persons with disabilities; a Section 101 rent supplement; any form of tenant-based rental assistance as defined by 24 CFR 982.1(b)(2); and any other duplicative federal, state, or local housing subsidy as determined by HUD or by the PHA under HUD standards. In the latter case, the Final Rule defines "housing subsidy" as not including the housing component of a welfare payment, a social security payment, or a federal, state or local tax concession.

The Final Rule continues existing practice to require that HUD or an approved entity perform a subsidy layering review before a PHA can enter into a HAP contract. *See* 24 CFR 4.13. Commenters objected to both the need for the review and the need for HUD to be involved. However, HUD defended retention of this requirement to assist in the prevention of excessive subsidy. Look for revised guidelines in the Federal Register in the near future.

PBV rents in Low Income Housing Tax Credit projects. Section 983.304(c). New provisions in the Final Rule are troubling regarding rent levels for PBV units within developments receiving low-income housing tax credits (LIHTCs). Previously, rents were set depending upon whether the unit sat within or outside of a "Qualified Census Tract (QCT)," *i.e.*, a census tract with very high poverty. *See* HUD Notice PIH 2002-22. Before, PBV rents for units inside of a QCT could not exceed the lower of 110% of FMR (or approved exception rent) or the rent

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charged for unassisted comparables. For purposes of determining comparability, non-Section 8 LIHTC units were not in the equation because they were considered "assisted." For projects outside of a QCT where LIHTC rents are equal to or lower than 110% of FMR (or approved exception rent), PBV rents could be the lower of 110% of FMR (or approved exception rent) or the rents charged for unassisted comparables. Thus, previously, PBV rents could be set at the LIHTC rent level if the LIHTC was higher than the 110% of FMR (or approved exception rent), and were not limited to the LIHTC rent where LIHTC rents were lower than FMR.

The Final Rule now caps PBV rents for units both inside and outside of QCTs to the LIHTC rent. This is true even where the LIHTC rents are below 110% of FMR. Where LIHTC rents are higher than 110% of FMR, PBV rents must be lower than LIHTC rents because they must be the *lower* of LIHTC rents or 110% of FMR. It appears as though this new rule applies to both initial determinations as well as annual adjustments, and could result in HUD actually *lowering* PBV rents in higher rent areas. Given that mandatory rent adjustments must be made when FMR decreases by 5% or more, this rule may well have negative ramifications for unit rents, providing a big disincentive for landlords to participate in the program. The industry was surprised to see these changes in the Final Rule, as HUD made them without the benefit of the rulemaking process. Several interested parties officially have raised objections to HUD, and apparently HUD is planning to issue a "clarification" in the near future. We will keep you apprised of further developments.

Environmental reviews. Section 983.58. PHAs have to ensure that a third

party environmental review (ER) is conducted before it does virtually anything respect to a PBV property. PHAs cannot enter into a HAP contract, and neither the PHA, the owner, nor their contractors can acquire, rehabilitate, convert, lease, repair, dispose of, demolish, construct, or commit or expend program or local funds for PBV activities, until an ER is completed.

However, the Final Rule outlines some practical exceptions. Units that previously underwent successful ER by an independent governmental "responsible entity" (RE) pursuant to 24 CFR part 58 under another program are exempt from subsequent ERs under the PBV program. If the PHA objects to the designated RE, it can file written objections to it performing the ER. In that case, or where the RE declines to perform the ER, HUD may perform the review itself under 24 CFR 58.11. In the case of existing housing, the RE must determine whether or not PBV assistance is categorically excluded under NEPA standards.

Inspections. Section 983.101. As the *minimum* standard, HUD requires that units comply with housing quality standards (HQS). While commentators requested more guidance on compliance with HQS standards, HUD declined to elaborate, citing the differences in local laws. HQS inspections must be conducted by the PHA, or in the case of units owned by the PHA, by an approved independent entity (IE). Prior to the proposal selection date, the PHA is the responsible for inspecting *every* unit to determine whether they substantially comply with HQS. 983.103(a)(2). In order to qualify to receive assistance, the unit must be in *substantial compliance* by the proposal selection date, and it must *fully comply* before the PHA can sign the HAP contract and before the family moves in.

However, requirements are not as onerous for subsequent inspections. Rather than having to inspect every PBV unit each year, the Final Rule requires inspections of a

representative sample of at least 20% of all PBV units in each *building*. 983.103(d). Commentators argued that the 20% should apply to all units in a development rather than in a particular building. But HUD declined to relax the standard, claiming that it will provide a better cross-section of the condition of units in a project. If more than 20% of the annual sample fails the initial inspection, the PHA must re-inspect *all* of the units in the building that failed. However, there are circumstances where inspections of more than 20% of the units may be required in a given year. PHAs also are required to pay attention to complaints and other information that comes to their attention, and should conduct additional inspections where warranted. 983.101(3). With regard to small buildings with 5 or fewer units, however, inspection of at least one unit will suffice.

Note that the Lead-based Paint Poisoning Prevention Act and the Residential Lead-based Paint Hazard Reduction Act of 1992, as well as the implementing regulations, apply to the PBV program. However, the lead-based paint requirements set forth at 982.401(j) do *not* apply to the PBV program. 983.101(c)(2).

Finally, the Final Rule makes clear that parts 982 and 983 do not create any private right of action in a family or any other party to require enforcement of the HQS requirements. 983.101(d).

Services to be performed by outside entities. Section 983.59. In the case of *PHA-owned units*, the Final Rule specifies that rent determinations and unit inspections must be performed by an IE. The IE must establish the initial contract rent based upon an appraisal. The PHA must use administrative fees to pay the IE and appraiser; other PBV program funds are off limits, and the family cannot be charged for any of these services.

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HUD ANNOUNCES COMPREHENSIVE CHANGES.... Cont'd

Procurement/competition. Sections 983.51, 983.519. A PHA has two choices in the method in which it selects units to participate in the PBV program. First, it may issue requests for proposals. However, the RFP cannot be limited to a single site nor impose restrictions that explicitly or practically preclude submissions of different sites. Second, and this is a new feature, the PHA may select a proposal that, within the last three years, has been approved through a competitive process under another program, such as HOME or LIHTC. Section 983.51(b)(2). PHA-owned *public housing* units are excluded from consideration under all circumstances. However, other PHA-owned units may be awarded with HUD approval. Section 983.51(e). PHAs are still required to publish a general notice pursuant to 24 CFR 983.51(c) to inform the public that the PHA is soliciting proposals for the PBV program.

The PHA administrative plan is important; PHAs must specify their procedures for selecting proposals in their administrative plan. 983.519(b). If the plan provides, PHAs can give a preference to competitive LIHTC, HOME, and CHDO projects. Noncompetitive projects for LIHTCs do not qualify. PHAs should consider revising their administrative plans to incorporate these

new options.

Site Selection: the goal of deconcentration. Section 983.57. PBV sites must be selected in a manner that satisfies a goal of deconcentrating poverty and expanding housing and economic opportunities. While the goal is not new, the Final Rule creates seven (7) new factors that PHAs must consider in determining whether a proposed PBV unit is consistent with that goal. They are: 1) whether the site is in an Enterprise Zone (EZ), Economic Community (EC), or Renewal Community (RC); 2) whether the concentration of assisted units will be or has decreased as a result of demolition; 3) whether the census tract is undergoing significant revitalization; 4) whether government funding has been invested in the area; 5) whether new market rate units are being developed in the area that will positively impact the poverty rate; 6) whether the poverty rate is greater than 20% and whether in the past 5 years there has been an overall decline in the poverty rate; and 7) whether there are meaningful opportunities for educational and economic advancement.

Evidence of completion. Sections 983.155(b), 983.156. Now only the PHA, and not HUD, sets requirements for "evidence of completion" of a housing project, including any additional documentation it may require. 983.155(b). When the PHA receives notice from an owner that the units are complete, the PHA must inspect the unit for compliance with the Agreement and

HQS. 983.156.

Relocation. Section 983.7. Administrative fee reserves can now be used for relocation costs from PBV units provided you can show that such a use is consistent with state and local law and HUD regulations on the use of reserves found at 24 CFR 982.155. You also must show that all other administrative expenses have been satisfied before using administrative fee reserves for relocation. You must be aware of any current Congressional limitations or restrictions on the use of administrative fee reserves, as they are promulgated from time to time.

Additionally, the acquisition of real property for a PBV project is subject to the Uniform Relocation Act (URA) and 49 CFR part 24, subpart B, and *PHAs are responsible* for ensuring an owner's compliance therewith.

Conclusion

In sum, the Final Rule provides much-needed guidance on various operational functions of the PBV program. We will keep an eye out for further elaboration on subsidy layering reviews, LIHTC developments, and other modifications to the program. Now is a great time to take a fresh look at your administrative plan to ensure that it allows you the flexibility provided in the Final Rule.



HDLI Welcomes to Membership:

Bay St. Louis Housing Authority
Bay St. Louis, Mississippi

Collier County Housing Authority
Immokalee, Florida

National Organization of African Americans in Housing
Washington, D.C.