



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING
OFFICE OF PUBLIC HOUSING INVESTMENTS

JUN 27 2007

MEMORANDUM FOR: All Housing Authorities Participating in the Moving to Work
Demonstration Program

FROM:  Dominique Blom, Deputy Assistant Secretary
Office of Public Housing Investments, PI

SUBJECT: Guidance Regarding Compliance with Environmental, Labor, and Other
Requirements When Awarding Project-Based Housing Choice Vouchers Under
the Moving to Work Program

The Moving to Work (MTW) Demonstration program, as adopted in the 1996 HUD appropriations act, provides public housing agencies and HUD the flexibility to design and test various approaches for providing and administering housing assistance that: reduce cost and achieve greater cost effectiveness in Federal expenditures; give incentives to families with children where the head of household is working, is seeking work, or is preparing for work by participating in job training, educational programs, or programs that assist people to obtain employment and become economically self-sufficient; and increase housing choices for low-income families.

To that end, the Secretary is able to waive portions of the U.S. Housing Act of 1937 (USHA) to further the initiatives of the participating MTW agencies. Nonetheless, MTW agencies are still bound by Sections 12 and 18 of the USHA, as well as other Acts and Executive Orders.

As part of their MTW plan, some agencies have been authorized to develop a reasonable policy and process for project-basing Section 8 certificates and/or vouchers during the term of the MTW demonstration. Some agencies have simplified selection procedures for building owners or utilized alternative documents in place of the Agreement to Enter into a Housing Assistance Payment Contract (AHAP).

The standard AHAP has several purposes. Aside from identifying and defining the respective roles and responsibilities of the housing authority and building owner in the plan to project-base housing assistance, the form also describes and obligates the parties to comply with the provisions of several statutes, regulations and other federal requirements.

Each MTW agency has entered into an agreement with HUD that includes a statement of authorizations waiving portions of the USHA. However, the MTW statute does not exempt a housing authority from compliance with laws outside the USHA; those statutes and associated

regulations must still be followed. These statutes include:

- The Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (URA)
- The National Environmental Policy Act of 1969 (NEPA) and related Federal environmental laws and authorities
- The HUD Reform Act of 1989

Several MTW agency agreements include an authorization to simplify the process of project basing Housing Choice Vouchers, including the ability to establish a “reasonable competitive process” for project basing. Although this simplification may result in the use of alternate forms or methodologies for awarding Housing Choice Vouchers, any such alternate forms still function as contracts or agreements, and thus trigger some or all of these statutes. To clarify the MTW agency’s responsibilities, we are providing some detailed guidance below.

RELOCATION ASSISTANCE

Persons displaced by the provision of project-based assistance are subject to the provisions of the Uniform Act. The regulation at 24 CFR 983.7 states the following:

(a) Relocation assistance for displaced person. (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24.

A “displaced person” is defined at 49 CFR 24.2(a)(9). The URA definition includes both persons displaced and persons not displaced. HUD program regulations include additional circumstances in programmatic definitions of a displaced person which must be considered. Some examples are listed in detail in CPD Handbook 1378.0.

In the case of project-based vouchers, the building owner must either certify that the site of the project was without occupants eligible for relocation assistance, or certify that the project is on a site where there are occupants eligible for assistance. The owner must also agree to comply with the provisions of the Uniform Act and implementing regulations in 49 CFR Part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided that payment of relocation benefits is consistent with state and local law, PHAs may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory requirements, including the requirements of 24 CFR 982.155 and other HUD issuances.

24 CFR 983.7(d) states that in computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement (i.e. AHAP) between the owner and the PHA. Even if an MTW agency has changed the AHAP to some other form, a contract exists between the owner and the housing authority, and, as such, this regulation applies.

ENVIRONMENTAL LAW

Activities under the project-based voucher program are subject to the National Environmental Policy Act, and the corresponding HUD environmental regulations in 24 CFR Parts 50 or 58. The specific reference can be found at 24 CFR 983.58.

Under 24 CFR Part 58, a unit of general local government, a county or a state (the “responsible entity” or “RE”) is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

If a PHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself (24 CFR 58.11). 24 CFR Part 50 governs HUD performance of the review.

In the case of existing housing under 24 CFR Part 983, the RE that is responsible for the environmental review under 24 CFR Part 58 must determine whether or not project-based voucher assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for project-based voucher activities under Part 983, until one of the following occurs:

(i) The responsible entity has completed the environmental review procedures required by 24 CFR Part 58, and HUD has approved the environmental certification and request for release of funds;

(ii) The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or

(iii) HUD has performed an environmental review under 24 CFR Part 50 and has notified the PHA in writing of environmental approval of the site.

The above restrictions apply to alternate forms of agreement, since alternate forms of agreement involve commitments of funds for project-based voucher activities, as well as to AHAPs and HAP contracts.

HUD will not approve the release of funds for project-based voucher assistance under Part 983 if the PHA, the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required). Again, the use of alternate forms of agreement constitutes a contract, and thus this regulation applies.

PREVAILING WAGES

The MTW statute specifically makes Section 12 of the USHA applicable to housing assisted under the demonstration except for housing assisted solely due to occupancy by families receiving tenant-based assistance. Section 12(a) states in part that:

“Any contract for loans, contributions, sale, or lease pursuant to this Act...shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.”

The provisions of Section 12 are further imposed in HUD project-based voucher regulations (24 CFR 983.4), which require compliance with Davis-Bacon prevailing wage provisions; the Contract Work Hours and Safety Standards Act; Department of Labor Regulations at 29 CFR Part 5; and other Federal laws and regulations pertaining to labor standards applicable to an Agreement covering nine or more assisted units.

Note that the statute does not specify the format of the “agreement” which would trigger labor standards. For example, the agreement may be in a format other than an AHAP and, if the agreement covers nine or more assisted units, labor standards are applicable. MTW agencies are responsible for the administration and enforcement of labor standards. Accordingly, MTW agencies must ensure that the owner(s) and its contractor(s) are aware of the labor standards requirements and are contractually obligated to comply. Further, MTW agencies must carry out performance monitoring, enforcement and recordkeeping activities to ensure full labor standards compliance and documentation.

SUBSIDY LAYERING

The HUD Reform Act of 1989 restricts the amount of assistance that can be provided to a project and cannot be waived by the MTW statute. HUD reviews and approvals related to project-based section 8 provide that housing authorities may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other Federal, State, or local agencies, or with low income housing tax credits.

The regulation at 24 CFR 983.55 details the requirements under the project based voucher program.

The PHA may provide project based voucher assistance only in accordance with HUD subsidy layering regulations, located at 24 CFR 4.13. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the project based voucher program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

The PHA may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the project based voucher assistance is in accordance with HUD subsidy layering requirements.

Additionally, the HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

Some MTW agreements have language that states that HUD reviews and approvals related to project-basing of Section 8 vouchers are suspended during the demonstration period, or that HUD can delegate approvals to the MTW agency. While such a suspension is possible with regard to reviews conducted under the USHA, these reviews cannot be waived if they are under the authority of another statute, in this case the HUD Reform Act of 1989. Similarly, delegation of authority to do subsidy layering reviews is authorized under section 911 of the Housing and Community Development Act of 1992, which allows HUD to further delegate subsidy layering review authority to qualified Housing Credit Agencies (HCAs - typically housing finance agencies) if Low Income Housing Tax Credits (LIHTCs) are involved. As such, the above regulation must remain in effect and MTW agencies will need to adhere to these requirements.

OTHER FEDERAL REQUIREMENTS

In addition to the above statutes, other federal requirements also apply to owners who choose to accept project-based vouchers.

The regulation at 24 CFR 983.4 notes other statutes and regulations that apply to the project-basing of vouchers, and are outside the scope of the 1937 Housing Act, and cannot be waived. Owners participating in the program should be aware of these requirements. Those requirements are listed as follows:

- Civil money penalty. Penalty for owner breach of HAP contract. See 24 CFR 30.68.
- Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 24 CFR part 24.

- Fair housing. Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.
- Lead-based paint. Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856). See 24 CFR Part 35, subparts A, B, H, and R.
- Lobbying restriction. Restrictions on use of funds for lobbying. See 24 CFR 5.105(b).
- Noncitizens. Restrictions on assistance. See 24 CFR part 5, subpart E.
- Program accessibility. Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 24 CFR parts 8 and 9.
- Section 3. Training, employment, and contracting opportunities in development. Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). See 24 CFR part 135.

CONCLUSION

In conclusion, we are advising all MTW agencies that should they choose to utilize alternative documents for project basing vouchers, they are subject to the above requirements, and should plan their programs accordingly. Should you have any questions, please contact Ivan Pour, Moving to Work Demonstration program team leader at (202) 402-2488.