



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

ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING

February 3, 2014

Dear Executive Directors:

Over the past several years the project-based voucher (PBV) program has become increasingly popular with public housing authorities (PHAs), developers, non-profits, investors and others as an essential element in expanding affordable housing for low-income families, homeless individuals, and veterans and, more recently as a tool to help preserve the rental housing stock of subsidized housing at risk of loss. With this increasing popularity, the Office of Public and Indian Housing (PIH) has seen an increase in both the number of questions related to the PBV program and requests for regulatory waivers for various reasons. The intent of this letter is to clarify PIH protocol for reviewing regulatory waiver requests and fielding general questions.

Waivers are relief from strict regulatory compliance upon a finding of good cause, subject to statutory limitations and waiver procedures pursuant to 24 CFR §5.110. Many waiver requests received by PIH are properly submitted in a timely fashion relative to the PBV process. Unfortunately, many of the more recent requests have been submitted subsequent to the occurrence of a regulatory violation. For example, program regulations at 24 CFR §983.153(a) prohibit a PHA from entering into an Agreement to Enter into a Housing Assistance Payments contract (AHAP) with an owner prior to a subsidy layering review being completed. Requests have been submitted on numerous occasions for a waiver of this provision after the PHA and owner have entered an AHAP prior to completion of a subsidy layering review.

Regulatory waivers are not intended to correct regulatory violations after the fact, but rather to provide prospective relief from regulatory compliance, upon a showing of good cause, prior to PHA or owner action that would create a regulatory violation. PHAs have an obligation to understand the regulations governing the PBV program prior to undertaking a PBV development.

Therefore, effective immediately, if a PHA chooses to submit a waiver request after a regulatory violation has already occurred, PIH will not approve the waiver request. Instead, the violation will remain outstanding, and the matter will be treated as an enforcement issue. In responding to the PHA, PIH will list the applicable regulatory violations, and inform the PHA in writing of what enforcement action (if any) will be taken and the basis for PIH's determination. In making the discretionary decision with respect to enforcement, PIH may consider the full range of enforcement actions available under the Consolidated Annual Contributions Contract, PBV Agreement to Enter into a Housing Assistance Payments Contract, PBV Housing Assistance Payments Contract and the PBV regulations. PIH may also choose to take no enforcement action at all.

In very limited circumstances, PIH may choose to waive a regulatory provision for a violation where the PHA was prevented—due to factors beyond its control—from submitting a prospective waiver request. For example, in the case of a natural disaster, the disaster might be the basis for both the regulatory violation and the PHA's inability to submit a prospective request. In this type of case, PIH may choose to waive the relevant regulatory violation. Please note that this is an extremely narrow exception to the policy detailed in the preceding paragraph and that, even in these cases, PIH may choose to treat the matter as an enforcement issue.

Also, effective immediately, if PHAs have any questions or are in need of technical support concerning the PBV program, such questions and requests for technical support must be in writing and addressed to the appropriate Office of Public Housing.¹ If the HUD field Office of Public Housing should need assistance in responding to a PHA's requests, staff will provide a scanned copy of the PHA's written request to the appropriate PIH Headquarters staff for assistance. Prior to requesting assistance, PHAs should consult available resources, including program regulations, PBV forms, Notices, and any other relevant HUD-directives. PIH Notice 2011-54, enclosed for your reference, provides guidance on the key program requirements with which PHAs must be familiar prior to implementing a PBV program. Highlights from the Notice are as follows:

- **Implementing a PBV Program.** If a PHA decides that it wants to implement a PBV program, it must establish various policies and procedures in its Administrative Plan prior to such implementation. In addition, if the PHA intends to use the PBV program, it must provide the projected number of PBV units, their general locations and how project basing will be consistent with its PHA Plan.
- **Proposal Selection Process.** A PHA **cannot** commit PBV assistance until or unless it has followed the proposal selection requirements defined in 24 CFR §983.51.
- **PHA-Owned Units.** There are different requirements when PHA-owned units are selected for PBV. HUD must review the selection of PHA-owned projects, and an independent entity must establish initial rents, determine rent reasonableness, and conduct inspections of units.
- **Agreement to Enter into a Housing Assistance Payments (AHAP) Contract.** For any projects involving new construction or rehabilitation, an AHAP must be executed **prior** to the start of any construction or rehabilitation. However, a PHA

¹ PHAs that are in the process of converting particular units to PBV assistance via the Rental Assistance Demonstration (RAD) should direct their questions to their assigned RAD Transaction Manager, who will then contact the appropriate field and/or headquarters staff.

may not execute an AHAP until a subsidy layering review and an environmental review are completed.

- **Subsidy Layering Review (SLR)**. These reviews are required for projects involving new construction and rehabilitation, when PBV is combined with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions and tax credits. HUD must perform the SLR review unless a housing credit agency has submitted a notice of intent to conduct SLRs, and the Department has published the name of the housing credit agency on the Department's website.
- **Environmental Review**. In accordance with 24 CFR §983.58, an environmental review is required for all PBV units including existing units. No AHAP for rehabilitated or new construction units may be executed until the environmental review is complete and no housing assistance payments (HAP) contract may be executed for existing units until the environmental review is completed.
- **Physical Accessibility**. PBV projects must meet program accessibility requirements of 24 CFR §983.102. A PHA must ensure that the percentage of accessible dwelling units complies with HUD requirements and that design and construction requirements, as applicable, are met.
- **Equal Opportunity Requirements**. A PBV program must comply with all applicable equal opportunity and nondiscrimination requirements and the PHA Plan's certification to comply with civil rights laws and to affirmatively further fair housing as required by 24 CFR §983.8.

Finally, while this letter is focused on the PBV program, PHAs should be aware that PIH will apply the same procedures detailed in this letter regarding retroactive waiver requests to the Section 8 Housing Choice Voucher program and all other Section 8 programs that PIH administers (e.g., the Section 8 Moderate Rehabilitation program).

Questions concerning this letter should be addressed to the Housing Voucher Management and Operations Division at (202) 708-0477.

Sincerely,



Sandra B. Henriquez
Assistant Secretary