



Klein Hornig Housing Alerts

June 2017

HUD Takes New Step to Facilitate Transfers of Section 8 PBRA between Projects

By Eric Herrmann and Jed D'Abra vanel

HUD sent correspondence last week to multifamily project owners and management agents soliciting “letters of interest” from owners interested in having Section 8 Project Based Rental Assistance (“**PBRA**”) transferred to their properties from other PBRA-assisted projects. The transfers of PBRA would be made pursuant to Section 8(bb) of the U.S. Housing Act (“**Section 8(bb)**”), a statutory provision that allows HUD to transfer PBRA budget authority to one or more other projects if a PBRA contract is terminated, is not renewed, or expires. This outreach by HUD appears to represent a meaningful step towards facilitating the preservation of PBRA HAP-assisted units through Section 8(bb) transfers.

In the past, PBRA budget authority associated with terminated PBRA contracts has often been recaptured by the U.S. Treasury – and, as a result, the number of much-needed PBRA units has been reduced. While Section 8(bb) has been a useful tool in several housing preservation and redevelopment transactions, many in the multifamily industry believe HUD could make greater use of Section 8(bb) to preserve scarce project-based rental assistance that might otherwise be lost due to an existing project’s poor physical condition, HUD enforcement proceedings against a project’s owner, or a project owner’s decision to “opt out” of the PBRA program. The HUD correspondence suggests that HUD intends to play a more proactive role in ensuring that before a PBRA HAP contract is terminated, HUD and other parties explore options to re-deploy the PBRA to other properties where it can help finance rehabilitation, construction, or preservation, and potentially support the redevelopment or creation of mixed-income communities.

For those potentially interested in receiving PBRA assistance through a Section 8(bb) transfer, the HUD correspondence includes a sample form letter that may be used by owners to notify HUD of their interest. In the sample form, owners are advised to provide HUD with certain project-specific information relating to the proposed receiving project (e.g., the property’s name and location, and HUD project numbers), and contact information relating to the receiving project’s owner. [A copy of the sample letter is attached to this Housing Alert.](#) HUD would then share this information with multifamily property owners who are interested in transferring their PBRA HAP contracts (in whole or in part) to one

or more other projects. The HUD correspondence also indicates that HUD will consider the use of Section 8(bb) to preserve PBRA HAP contracts in the context of pending enforcement actions.

HUD's policies and procedures for transferring PBRA budget authority under Section 8(bb) are set forth in Notice H-2015-03, issued on April 3, 2015 (the "**8(bb) Notice**"), and in a series of clarifying FAQs. The 8(bb) Notice applies where HUD and an owner with an existing PBRA HAP contract mutually agree to terminate the contract and transfer either some, or all, of the remaining budget authority to one or more HAP contracts at other multifamily properties¹. The receiving projects can have the same or different owner entities and may or may not be HUD assisted prior to the transfer. The budget authority cannot be transferred until the units at the receiving project are existing and ready for occupancy. However, the receiving owner may use HUD's approval letter as a conditional commitment to support financing for new construction or rehabilitation.

As indicated above, a transfer of PBRA under Section 8(bb) can be used in a variety of different contexts. As an example, an owner of a project with a 100-unit PBRA HAP contract could transfer the remaining budget authority to three newly constructed (or existing) 100-unit projects, each with one third PBRA assisted units, one-third unassisted LIHTC units, and one-third market units. Because under the 8(bb) Notice Section 8(bb) transfers must be "budget neutral," the exact number of units that the transferred budget authority can support will depend on whether the market rents at the "receiving property" are higher or lower than the market rents at the "transferring property."

If you would like to review the 8(bb) Notice, it can be found at the following link:

<https://portal.hud.gov/hudportal/documents/huddoc?id=15-03hsgn.pdf>

Should you have any questions about the Section 8(bb) process or requirements, please feel free to contact Eric Herrmann (D. 202.495.4089 – eherrmann@kleinhornig.com), Jed D'Abravanel (D. 202.495.7213 – jdabravanel@kleinhornig.com), or another Klein Hornig attorney.

¹Please note that HUD has separate statutory authority for fiscal years 2017 and 2018 under Section 211 of the HUD appropriations legislation for fiscal year 2017 to approve transfers of PBRA assistance in cases where HUD held or insured debt or statutorily required use restrictions must be transferred along with a PBRA contract.

SAMPLE FORMAT FOR 8bb LETTER OF INTEREST

Project's or owner Letterhead

To: HUD Local/Regional Office

Through this letter I am expressing interest in receiving Section 8 Project Based Rental Assistance at the following property(ies):

Name of Property:

State:

iREMS ID number:

FHA number:

HAP contract number:

I provide consent to HUD to provide the name and address of my property and other relevant information about the property, as well as the contact information indicated below with Owners who are seeking to terminate their Section 8 HAP contract, in whole or in part, and transfer the remaining budget authority to another project(s).

Contact Info for 8(bb) Inquiries: *{insert name, title, company, address, telephone number, and email address}*

Sincerely,

Owner