




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

March 22, 2018

MEMORANDUM FOR: All Multifamily Regional Center Directors
All Multifamily Satellite Office Directors
All Multifamily Asset Management Division Directors
All Multifamily Operations Officers

FROM: 
Robert Iber, Acting Deputy Assistant Secretary for Multifamily
Housing Programs, HT

SUBJECT: Transfer of Budget Authority Remaining on a Project-Based Section
8 HAP Contract that is Terminated as the Result of an Enforcement
Action

Section 8(bb)(1) of the United States Housing Act of 1937 requires HUD to transfer any budget authority remaining on a project-based Section 8 HAP contract when it is terminated, or when it expires and is not renewed, to another HAP contract under terms prescribed by the Secretary. 42 U.S.C. § 1437f(bb)(1). Notice H 2015-03 establishes guidance for transfers of budget authority when the HAP contract, or one of the contracts resulting from its subdivision into multiple HAP contracts, is terminated by the mutual agreement of the owner and the contract administrator.¹ This memorandum, on the other hand, establishes guidance for such transfers when the HAP contract is terminated as the result of a default by the owner and a resulting enforcement action by HUD. However, regardless of the circumstances surrounding the termination of the HAP contract, all transfers of budget authority are referred to throughout this memorandum as “Section 8(bb) transfers.”

This memorandum addresses the following: (1) processing a Section 8(bb) transfer in conjunction with the termination of a HAP contract for enforcement reasons; (2) identification and selection of a project to which the budget authority under the terminated HAP contract (Contract A) is to be transferred (Project B);² (3) budget neutrality; (4) tenant notification and relocation; and (5) coordinating with the Financial Operations Branch in OAMPO.

¹ Notice H 2015-03 may be accessed at
<https://portal.hud.gov/hudportal/documents/huddoc?id=15-03hsgn.pdf>.

² The contract being terminated and the project to which it is subject are referred to throughout this memorandum as Contract A and Project A, respectively. Conversely, the contract(s) to which budget authority is to be transferred and the project(s) to which it is subject are referred to as Contract B and Project B, respectively.

BACKGROUND:

Section 8(bb) provides the Department with an administrative tool for preserving the level of project-based Section 8 rental assistance in place at the time of Contract A's termination. As noted above, if Contract A is terminated or expires and is not renewed, Section 8(bb) requires HUD to transfer any budget authority remaining on Contract A at the time of termination to another contract (i.e., Contract B) to provide assistance to eligible families, including families receiving project-based assistance at the time of Contract A's termination, under the terms and conditions prescribed by HUD. Contract B may either be a new or existing Section 8 HAP contract. To be eligible for transfer, the remaining budget authority must not be subject to any rescission requirement under the applicable HUD Appropriations Act (HUD Headquarters will advise if there are any rescissions).

HUD may terminate or authorize the termination of Contract A based on a default resulting from failure to maintain the physical condition of the project or some other failure that results in a default (e.g., financial and/or managerial mismanagement of the project). The path for pursuing a Section 8(bb) differs depending on whether the reason for enforcement action is due to poor physical condition or some other reason.

PROCEDURES FOR PROCESSING A SECTION 8(BB) TRANSFER BASED ON A HAP CONTRACT TERMINATION AND RESULTING ENFORCEMENT ACTION:

A proposed Section 8(bb) transfer resulting from a HAP contract termination for reasons other than poor physical condition will be considered by Headquarters on a case-by-case basis. Contact your account executive in Headquarters Field Asset Management Division of the Office of Asset Management and Portfolio Oversight (OAMPO) to request a concept meeting prior to pursuing the enforcement action. The field office will receive guidance during and following the concept meeting.

A request for a Section 8(bb) transfer resulting from a HAP contract termination based on a failure to maintain the physical condition of the project does not require a concept meeting. However, Multifamily Housing field office managers and supervisors may request one.

The field office will follow current HUD guidance on enforcement actions (e.g., OAMPO Director's October 4, 2017, memorandum "Interim Guidance on forthcoming changes to Notice 2015-02"; standard work for Failed REAC Inspections; and subsequent notices, memoranda, and standard work documents). Steps include issuing a Notice of Default (NOD) to the Owner and, if the Owner fails to cure the default within the time period specified in the NOD, submitting a written request to the Director of OAMPO to terminate the HAP contract. In its request, the field office will include a statement of the field office's intent to process a Section 8(bb) transfer in conjunction with the HAP contract termination.

The field office must receive written approval from the Director of OAMPO to terminate

Contract A before issuing letters to local government entities requesting a recommendation of one or more projects to receive the Section 8 budget authority (Project B). See guidance below in “Procedures for Identifying Project B and Reviewing Its Eligibility to Receive Budget Authority Under Terminated Contract A.”

In all cases of a Section 8(bb) transfer resulting from a HAP contract termination, the FOB Branch Chief (currently Lorri Farrell) must confirm that remaining budget authority is available to transfer before the field office proceeds with the Section 8(bb) transfer. See guidance below in “Coordinating with the Financial Operations Branch in OAMPO.”

If relocation of tenants is necessary, and Property B will be approved by Headquarters and ready for occupancy to receive tenants from Property A, the field office will follow the guidance below in “Tenant Notification and Relocation” and “Coordinating with the Financial Operations Branch.”

PROCEDURES FOR IDENTIFYING PROJECT B AND REVIEWING ITS ELIGIBILITY TO RECEIVE BUDGET AUTHORITY UNDER TERMINATED CONTRACT A:

In a Section 8(bb) transfer resulting from a HAP contract termination for enforcement, the owner of Project A is not entitled to propose Project B. Instead, the Section 8(bb) transfer request package to Headquarters must include a letter from a state or local governmental entity proposing one or more Project Bs. Without such a letter, Headquarters will not approve the proposed Section 8(bb) transfer.

Upon receipt of the Director of OAMPO’s approval of the HAP contract termination, the field office will give written notification to an appropriate governmental entity (i.e., a unit or agency of State or local government engaged in housing and community development with jurisdiction over the area in which Project A or a prospective Project B is located) of the opportunity to propose one or more Project Bs for receipt of the Section 8 budget authority. In determining the appropriate governmental entity to notify, the field office will consider HUD’s goal of transferring the budget authority to a project that would allow continued assistance to eligible families assisted under Contract A, or, in the absence of such a project, to a project in a location where there is a high demand for affordable housing.

The field office’s notification to the governmental entity will include a list of projects whose owners have submitted to HUD letters of interest in receiving Section 8 budget authority. In the notification, HUD will convey a preference to transfer Section 8 budget authority to HUD-affiliated projects (i.e., projects with FHA insurance and/or HUD rental assistance contracts), but also that HUD will consider projects not on the list, including projects that are not subject to an existing HAP contract. The field office will use the sample notification Attachment A (“Sample Notification Letter to State or Local Government Entity”) that is provided with this memorandum.

In the letter to the governmental entity, HUD will request a written recommendation of potential Project Bs listed in order of preference. The governmental entity will be asked to provide more than one recommendation, in case more than one Project B is needed to house the tenants who

choose to move or the primary selection(s) do not successfully complete the eligibility and technical review process.

The field office is encouraged to conduct a preliminary concept meeting or conference call with the governmental entity to explain the 8(bb) transfer requirements and process in greater detail than the sample notification letter. If the governmental entity so requests, the field office may share information from HUD's records about the projects that the governmental entity may be considering.

The field office will provide no less than six weeks and no more than ten weeks for the governmental entity to provide a list of potential Project Bs in writing. If the field office does not receive a response from the governmental entity by the stated deadline or if the recipient declines to participate, the field office shall contact another government entity. To avoid conflicting recommendations, the field office will not provide more than one governmental entity at a time with the opportunity to recommend Project B.

Upon receipt of a written recommendation of one or more Project Bs from the state or local government entity, the field office will notify the Owner of each proposed Project B in priority order using the sample notification Attachment B ("Sample Notification Letter to Owner of Project B") that is provided with this memorandum.

For each proposed Project B owner who expresses an interest in receiving the Section 8 budget authority, the field office will proceed to conduct a full eligibility and technical review of the project in accordance with Section VI ("Project B") of Notice H 2015-03 and the portions of Section VIII ("Multifamily HUB/PC Responsibilities") that impose requirements on Project B and its Owner. The field office will proceed to review proposed Project Bs in priority order until a sufficient number of Project Bs have been identified to meet the needs of any tenants at Project A who wish to move to Project B and/or all the remaining budget authority has been earmarked for transfer.

BUDGET NEUTRALITY PROCEDURES:

All transfers of Section 8 budget authority must be budget neutral. Budget neutrality means that the annual gross rent potential (GRP) of the units that will become assisted at one or more Project Bs (as determined by the market) may not exceed the annual GRP for assisted units terminating at Project A. Field staff will follow the budget neutrality guidance and procedures issued for Section 8(bb) transfers under the Notice H 2015-03 and subsequent guidance, including the use of the budget neutrality workbook available on the National Standard Work SharePoint site.

TENANT NOTIFICATION AND RELOCATION:

When tenants need to be relocated as the result of a HAP termination, the field office will include a request for tenant relocation in the HAP contract termination request to Headquarters memorandum. If approved, Headquarters will request Tenant Protection Vouchers (TPVs) for the

tenants in accordance with Office of Public and Indian Housing (PIH) procedures (i.e., PIH Notice 2001-41 and PIH Notice 2017-10). PDD, along with its relocation contractor, will manage the relocation of tenants, coordinating with the field office, as needed.

In cases where the local government entity has proposed one or more Project Bs for Section 8(bb) transfer and relocation of tenants, the following guidance applies. Note that the relocation of tenants must not be delayed as a result of an administrative delay in the processing of Project B for the Section 8(bb) transfer.

1. In cases where a viable Project B has been identified but time is limited to complete the full 8(bb) review and approval process before tenants must be relocated, Headquarters will consider—on a case-by-case basis—providing approval to shorten the Project B review process. Shortening this process must be justified by the need to relocate tenants to Project B due to poor physical condition at Project A. If there is no urgency to relocate tenants or there are no tenants at Project A, all Project B requirements in Notice H 2015-03 must be met (i.e., Section VI “Project B” of Notice H 2015-03 and the portions of Section VIII “Multifamily HUB/PC Responsibilities” that impose requirements on Project B and its Owner).
2. The field office must determine, with input from the FOB Branch Chief and PDD, the termination date of the HAP contract at Project A and transfer date of the Section 8(bb) budget authority to Project B. See “Coordinating with the Financial Operations Branch” below.
3. The tenant relocation meeting will be scheduled by PDD (with input from the field office), but not until after (1) the Public Housing Authority has received the vouchers from PIH; (2) the relocation contract task order has been issued; (3) the Section 8(bb) transfer has been approved by Headquarters and Project B has been approved and is ready for occupancy.
4. If Property B is not ready for occupancy by the time of the tenant relocation meeting as established by PDD, then it will not be offered as an option for the tenants being relocated.
5. PDD will provide notification of the option to move to Project B in lieu of receiving a TPV at the tenant relocation meeting. PDD will coordinate all notifications and communication with tenants with the field office to ensure the utmost clarity.
6. PDD will manage the relocation of tenants to Project B. Situations where there are not enough units and unit types at Project B available for the tenants who choose to move to Project B will be handled on a case-by-case basis.

COORDINATING WITH THE FINANCIAL OPERATIONS BRANCH IN OAMPO:

All Section 8(bb) transfers resulting from a HAP contract termination must be coordinated with the Headquarters Financial Operations Branch (FOB) in OAMPO. In all cases of Section 8(bb) transfer involving HAP termination due to enforcement action, the FOB Branch Chief must ensure that remaining budget authority is available to transfer and, if tenants will be relocating to Project B, the field office must coordinate with the Branch Chief to set the HAP termination and budget authority transfer dates.

Ensuring Budget Authority Is Available to Transfer

To ensure that remaining budget authority is available for the Section 8(bb) transfer, the field office will

1. Include in the request to terminate the HAP contract the following statement: "The field office intends to pursue a Section 8(bb) transfer. Please confirm that there is remaining budget authority from [insert Project Name and Contract Number] to transfer via Section 8(bb)."
2. Submit a copy of the HAP contract termination request to the FOB Branch Chief. The Branch Chief will confirm that remaining budget authority is available for transfer. The Director of OAMPO's approval memorandum for the HAP contract termination will include FOB's confirmation of remaining budget authority to transfer via Section 8(bb). Note that the HAP contract termination approval memo is not an approval of the Section 8(bb) transfer recommendation. The field office must submit the Section 8(bb) transfer recommendation as a separate request.
3. Request that the recapture of obligated balances on terminated contracts be deferred due to a pending 8(bb) transfer as part of the Annual Inactive Review Exercise conducted by the Headquarters FOB. However, the field office should do so only for contracts where there is a reasonable plan for the transfer, following the guidance in this memorandum. All requests to retain balances for 8(bb) transfers are subject to review under the annual financial audit.

The recapture of obligated balances remaining on the terminated contract may be deferred for up to two years from the last voucher period to allow HUD to complete a pending 8(bb) transfer except when the funds are required to meet a Congressionally enacted funding rescission from the Project Based Rental Assistance account. In cases where tenants are not moving to Project B, the Section 8(bb) transfer recommendation package must be received in Headquarters no later than nine months after the termination of the contract in the iCON/TRACS system.

All requests to defer the recapture of funds on inactive contracts are submitted to the Deputy Assistant Secretary by Headquarters FOB on an annual basis and must be reviewed and approved

by the DAS. An approval to retain obligated balances on a terminated contract does not guarantee that any future 8(bb) budget authority transfer requests will be approved.

Determining 8(bb) Transfer Date When Relocating Tenants to Project B

Tenants may not be relocated to Project B before the Section 8(bb) budget authority transfer date. In cases where a Project B has been identified for relocation of tenants, the field office will

1. Upon receipt of the HAP contract termination approval memo, contact the FOB Branch Chief to coordinate the termination date of the HAP contract at Project A and the date of transfer of Section 8(bb) budget authority to Project B.
2. Confirm the proposed Section 8(bb) transfer date with PDD.

SUBMISSION TO HEADQUARTERS:

The submission to Headquarters will include a memorandum from the Regional Director to the Director of the Office of Asset Management and Portfolio Oversight. In addition to the information required in Notice H 2015-03 related to Project B and the location of Project B, the memorandum will include a description of the history of the enforcement action and how the tenants were protected.

The 8(bb) request package to Headquarters must be submitted within nine months of the termination of the contract in iCON/TRACS.

The guidelines in this memorandum are effective immediately. Please contact the assigned Headquarters Account Executive for your Region/Satellite office if you have questions about this process and Lorri Farrell at (202) 402-2507 for questions about the budget authority preservation and transfer.

Attachments:

- A. Sample Notification Letter to State or Local Government Entity
- B. Sample Notification Letter to Owner of Project B

Attachment A

SAMPLE NOTIFICATION LETTER TO STATE OR LOCAL GOVERNMENTAL ENTITY

[Address]

RE: Identification of Recipient Property for Section 8 Project Based Rental Assistance

Dear [Official Name]:

As previously communicated on [insert date], the Department of Housing and Urban Development is terminating the Section 8 Housing Assistance Payment (HAP) contract of [insert property name and address] a result of an enforcement action. To preserve access to affordable housing in [insert geographic area], HUD is requesting the participation of [name of governmental entity] in selecting a property in your jurisdiction to which HUD would transfer any budget authority remaining on the Section 8 HAP contract that HUD is terminating. In order for your office to participate in this process, we require a response to this letter by [insert date – 10 days from date of letter]. Furthermore, your final recommendation of one or more projects to receive the budget authority is due to HUD in writing by [insert date that is no less than six weeks and no more than ten weeks from date of letter].

Section 8(bb)(1) of the United States Housing Act of 1937 requires HUD to transfer any budget authority remaining on a Section 8 HAP contract that is terminated (Project A) to one or more receiving projects (Project Bs). 42 U.S.C. § 1437f(bb)(1). Consistent with the definition of “multifamily housing project,”¹ the property to which the budget authority is transferred must consist of five or more dwelling units. HUD’s policies and procedures require that the owner of the property enter into a long-term (i.e., 20-year) Section 8 HAP contract.

HUD must certify that all eligibility requirements are met, but under current Multifamily Housing (MFH) policy, MFH may not choose the Project B candidates. Thus, MFH requests a recommendation of potential Project Bs from your office, listed in order of preference. More than one recommendation is requested, in case more than one recipient project is needed to house the tenants who choose to move or the primary selection(s) do not successfully complete the eligibility and technical review process.

Attached is a list of potential projects in the state whose owners have submitted to HUD letters of interest in receiving Section 8 budget authority. HUD will also consider eligible properties not on this list that your office may recommend.

HUD requests that consideration be given to the proximity of potential recipient projects to Project A where the Section 8 HAP contract is being terminated, and that preference be given to HUD-affiliated properties (i.e., properties with FHA insurance and/or a HUD rental assistance contract).

¹ “Multifamily housing project” is defined in section 211 of HUD’s FY 1997 Appropriations Act as “a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under section 8 of the United States Housing Act of 1937.”

Extensive guidance on Section 8(bb) transfers is provided in Notice H 2015-03 and subsequent guidance (see attachments). Although Notice H 2015-03 does not apply in an enforcement context, upon receipt of a written recommendation of one or more Project Bs from your office, HUD's regional center/satellite office will proceed to conduct a full eligibility and technical review, in priority order, of the proposed Project Bs, in accordance with the guidance in Sections VI and VIII of the Notice and subsequent guidance.

The amount of budget authority available to transfer from Project A will fund a monthly gross rent potential (GRP) at Project B of up to [insert monthly GRP]. At Project A, this GRP is equivalent to [insert number of terminating units] assisted units. However, the number of units that may be funded at Project B may be different, depending on the market rents as determined by a Rent Comparability Study.

Please contact [insert name and contact info] by [insert date – same as paragraph 1] if you are interested in participating in this process. We will then reach out to schedule a preliminary concept meeting or conference call to discuss the process and the requirements. Your final recommendation of one or more Project Bs is due in writing to us by [insert date – same as paragraph 1]. If either of these due dates is not met, HUD will proceed without the benefit of your office's recommendation. This may also result in the unfortunate loss of Section 8 project-based affordable housing in your jurisdiction.

We look forward to your response.

Sincerely,

[Resolution Specialist Branch Chief or AM Division Director or Regional Director]

Attachments:

- (1) List of potential Property Bs submitted by Owners interested in receiving Section 8 budget authority
- (2) Notice H 2015-03
- (3) Section 8(bb) Frequently Asked Questions

Attachment B

SAMPLE NOTIFICATION LETTER TO OWNER OF PROJECT B

[Address]

RE: Request Participation in Section 8(bb) Process

Dear [Owner Name]:

Your property [insert name of property] at [insert property address] has been identified by [insert name of governmental entity] as a potential recipient of Section 8 Project Based Rental Assistance through the transfer of budget authority remaining on a project-based Section 8 HAP contract at a project in your locale or State that HUD is terminating as the result of an enforcement action against the owner of the project (Project A). The transfer of budget authority remaining on that contract to another contract is required under Section 8(bb)(1) of the United States Housing Act of 1937. HUD requests a confirmation from you in writing of your interest in receiving this budget authority by [insert date].

Consistent with the definition of “multifamily housing project,”² the property to which the budget authority is transferred must consist of five or more dwelling units. HUD’s policies and procedures require that the owner of the property enter into a 20-year HAP contract. Owners with existing Section HAP contracts are also required to renew their contracts for 20-years following the transfer of the additional budget authority.

The amount of budget authority available to transfer from Project A will fund a monthly gross rent potential (GRP) at Project B of up to [insert monthly GRP]. At Project A, this GRP is equivalent to [insert number of terminating units] subsidized units. However, the number of units that may be funded at Project B will likely change, depending on the market rents as determined by a Rent Comparability Study.

HUD will be conducting a full eligibility and technical review of [name of Project] in accordance with the guidance in Notice H 2015-03, Sections VI and VIII. To complete this review, HUD will be requesting the submission by you of certain documents and studies.

Assuming you accept any budget authority offered to you and depending on processing time, tenants at Project A may be given the option to move to your property. Relocation expenses will be paid by HUD.

Please contact [insert name and contact information] by [insert date] if you are interested in participating in this process and for additional information. If we do not hear from you by this date, HUD may withdraw this offer. If you do agree to participate in this process, HUD will provide you with additional deadlines for submission of documents. HUD may terminate this process due to missed deadlines or failure to meet the eligibility requirements.

² “Multifamily housing project” is defined in section 211 of HUD’s FY 1997 Appropriations Act as “a property consisting of more than 4 dwelling units that is covered in whole or in part by a contract for project-based assistance under section 8 of the United States Housing Act of 1937.”

We look forward to hearing from you.

Sincerely,

[Resolution Specialist Branch Chief or AM Division Director or Regional Director]