Frequently Asked Questions on

Transferring Budget Authority under Section 8(bb)(1)

February 18, 2016

1. ***How does HUD determine the maximum number of units that can be placed on the contract at Property B?***

Response: 8(bb) transfers must be "budget neutral." "Budget neutrality" means that the annual gross rent potential (GRP) for Property B may not exceed the annual GRP for units terminating at Property A. Budget neutrality may result in either an increase or decrease in units placed on the contract at Property B as compared to those being terminated at Property A, if the average rents for the properties differ. (Any decrease in units of more than 5 percent must be supported with additional documentation indicating a material improvement in location or a market-driven need to reconfigure unit types, as detailed in section VI.D of the Notice.)

Note that for Property A, GRP is determined based on current PBRA rents for all contract units being terminated through the 8bb. For Property B, GRP is determined based on market rents as established by an RCS. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents. For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS.

The sample calculation below illustrates how to use GRP to size units at Property B and demonstrate budget neutrality of the transfer (numbers are for illustrative purposes only).

Unit Sizing and Budget Neutrality Demonstration					
		Rents	**Units**	**Subtotal**	**Total**
Property A: Gross Rent Potential					
A	Current monthly GRP for all contract units at Property A				$101,250.00
	GRP - 1 Bedrooms ($870 per month X 50 units)	*$870*	*50*	*$43,750.00*	
	GPR - 2 Bedrooms ($1150 per month X 50 units)	*$1,150*	*50*	*$57,500.00*	
B	Annual GRP at Property A (Line A X 12 months)				$1,215,000.00
C	Number of Contract Units at Property A				100
Property B: Initial Estimate of Units					
D	Monthly GRP for Property A units at Property B market rents, by unit type				$100,775.00
E	*GRP - 1 Bedrooms*	*$900*	*48*	*$43,200.00*	
F	*GPR - 2 Bedrooms*	*$1,175*	*49*	*$57,575.00*	
G	Annual GRP for units terminating at Property A using Property B market rents (Line D X 12)				$1,209,300.00
H	Budget Neutrality Indicator (Line G/Line B)				99.5%
	Size the units at Property B so the budget neutrality indicator is 100% or less				
I	Estimated Number of Units for Property B (Line E + F)				97
Note: The final number of units at Property B may differ from this estimate if there is a change in the mix of unit types from Property A to Property B. This is acceptable so long as total GPR for Property B does not exceed GPR for Property A. To continue our example, a combination of 38 one-bedroom units and 57 two-bedroom units can be accommodated at Project B within the annual GRP of $1.215M (or Budget Neutrality Indicator of 99.9%), for a total of 95 units.					

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Using the GRP at Property A and Property B, field offices must submit a unit sizing and budget neutrality calculation worksheet with the 8(bb) request for review by headquarters. A template for the calculation will be provided to HUD field staff. The demonstration of an equivalent or reduced GRP at Property B will satisfy the requirements of the Notice to demonstrate that the remaining budget authority being transferred from Property A is sufficient to fund the proposed number of units at Property B (See Sections III.E and VIII.A.5 of the Notice).

2. ***How do I "size" the transferring number of units when there are multiple Property Bs?***

   Response: In a one-to-many transfer, the GRP for the "many" should be calculated on a gross basis, i.e., combining all Property Bs to ensure that the gross GRP does not exceed the GRP at Property A. Next, the gross GRP is divided among the "many" according to the proposed units and unit types at each property. A unit sizing and budget neutrality calculation worksheet will be provided to field offices to assist with this calculation.

3. ***What are "budget authority" and "remaining budget authority" and how is remaining budget authority related to the sizing of number of units at Property B?***

   Response: In this context, budget authority is a commitment to fund 12 months of subsidy at Property A. Remaining budget authority is 12 months of (calendar year) budget authority for Property A, less amounts expended/vouchered for during the calendar year at the time of the transfer. Remaining budget authority <u>will often be greater than</u> the balance reflected in LOCCS, as a full year of funding may not have been obligated to Contract A in the accounting system.

   Remaining budget authority is not related to sizing the number of units that may be added at Property B. As discussed in FAQ 1, Gross Rent Potential is relied on to size the number of units that can be supported by the transfer and to demonstrate budget neutrality as required by the Notice. Gross Rent Potential less tenant contributions is used to impute the total annual budget authority needed for housing assistance payment to Property A and Property B.

   The field office is not required to submit the amount of remaining budget authority on Contract A as part of its 8(bb) approval request to headquarters, since the number continually changes as vouchers are submitted. Only the unit sizing and budget neutrality demonstration is required (see FAQ 1).

4. ***What contract rents should I use for the 1-day/amended contract at Property B? What if the rents at Property B are above-market?***

   Response: Use market-level rents for Property B as established by an RCS. For HUD-assisted properties with an RCS conducted within the past 12 months, current rents may be considered market rents. For the subsequent MAHRA renewal of Contract B, the Regional Center director can waive the requirement in Section 2-5 of the Section 8 Renewal Guide for a new RCS.

   HUD will not approve Property B **above-market** contract rents as part of an 8(bb) transfers. Market rate units may be added to an existing **Option** 4 contract where rents are above market, but there must be a separate rent schedule for the new market rate 8(bb) units. Owners with projects that currently have an Option 4 renewal and/or are considering renewing under Option 4 must submit an RCS as a part of the 8(bb) application in order to establish the market rent.

5. ***Can an owner increase rents under Option 1 or Option 2 when renewing the one-day/amended contract?***

   Response: No. While the one-day/amended contract can reflect an increase in rents, the 8(bb) MAHRA renewal rents cannot be another increase over the one-day/amended contract rents. The one-day/amended contract rents and the 8(bb) MAHRA renewal rents must reflect the market rents determined at the time of sizing.

6. ***If Owner A is willing, can we renew a contract that has expired (even up to several years ago) in order to facilitate the 8(bb) transfer, as long as the remaining funds have not been swept? A related question is whether we can renew a contract if all the tenants have already been issued, or are about to be issued, TPVs?***

   Response: No to both questions. To execute an 8(bb) transfer, Contract A must not be allowed to expire. Before Contract A expires, execute a short-term renewal under Chapter 2 of the Section 8 Renewal Guide to protect the tenants. Furthermore, there is a presumption in the Notice that HUD has made a determination that the 8(bb) transfer is in the best interest of the tenants. The Notice also provides that tenants will have the option of moving to Project B or receiving a TPV. Field offices must initiate the 8(bb) transfer process with sufficient advanced-planning so these choices are available for tenants.

7. ***Is it mandatory to renew Project A's existing contract for a short term if the 8(bb) transfer has not yet been approved before the expiration date of the current HAP contract?***

   Response: Yes, the contract must have a short-term renewal to remain an existing contract and be subject to the Notice. Once the contract expires, it is no longer an active contract. The Notice only addresses the transfer of budget authority from an existing, active HAP contract.

8. ***If an owner is uninterested in participating in an 8(bb) transfer, can HUD step in and execute the transfer?***

   Response: Under the current notice, 8(bb) transfers require mutual agreement from both Owner A and Owner B. If the owners do not mutually agree to the terms of an 8(bb) transfer, any remaining budget authority will be recaptured after contract termination.

9. ***The current notice states in paragraph III.B that the Notice applies only when the contract administrator and Owner A have mutually agreed to "terminate the Contract so that all of the remaining budget authority can be transferred to another multifamily housing project." Do we take this literally to mean all the budget authority?***

   Response: No, this does not literally mean that all budget authority has to be transferred to a single project in order to obtain Departmental approval. OAMPO will only allocate the necessary budget authority.

10. ***Can the field approve a small transfer of budget authority?***

    Response: No, Headquarters must approve all transfers.

11. ***Is there a minimum threshold for transfer of budget authority?***

    Response: No.

12. ***If the owner prepared a Phase I ESA for his project three years ago, is a new one needed?***

    Response: If a Phase I ESA is required as part of the 8(bb) transfer, then yes. According to Section 9.3.A.1.c. of the 1/29/2016 MAP Guide, "The Phase I ESA must be conducted (meaning the earliest of the date of the site visit, records review documents, or interviews) within one-year of the submission to HUD. HUD may require updates or additional analysis in specific circumstances. A Phase I ESA that was conducted more than 180 days prior to the submission date to HUD, but within the allowable one year period, must be updated pursuant to Section 4.6 of ASTM E 1527-13. A Phase I ESA prepared more than one year prior to submission to HUD, even if updated within 180 days of being submitted, is not acceptable."

13. What is HUD's stance on using an environmental review from another agency, for example Rural Development?

Response: If a review has been prepared for a HUD project by another agency, those documents should be requested and used to the extent possible. However, HUD must conduct its own environmental analysis and prepare its own environmental review, and HUD will be responsible for the ultimate findings and determinations. See 24 CFR 50.35. HUD would use the other agency's review of the site for reference, and ask the applicant to submit new or updated documentation and reports as needed.

14. Has a point of contact with PD&R [Field Economist] for an 8(bb) review been established?

Response: The Field Economists are located in Boston, Philadelphia, Atlanta, Chicago, Oklahoma City, Ft. Worth, Denver, Los Angeles, San Francisco and Seattle.

15. Do the Field Economists need to know details about current tenants in order to demonstrate demand for additional affordable housing?

Response: If Owner B prepared a market analysis that would be sufficient. If not, then information on the project's current occupancy (showing that their current units are fully occupied) plus a wait list, if they have one, together would demonstrate that there is demand for additional affordable housing. Details on current tenants such as their names, ages, are not necessary.

16. Can an owner sell their HAP contract?

Response: HUD is not involved in third-party agreements.