



## Frequently Asked Questions on Transferring Budget Authority under Section 8(bb)(1)

**April 22, 2016**

(Supersedes the FAQs published on March 14, 2016)

### BUDGET NEUTRALITY

- How does HUD determine the maximum number of units that can be placed on the contract at Property B? *REVISED April 22, 2016***

**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.

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 if Property B intends to renew the contract under Option 1 MUTM. If Property B intends to renew under Option Two, then the GRP is determined by a budget that is limited to the market as determined 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
<b>Property A: Gross Rent Potential</b>					
A	Current monthly GRP for all contract units at Property A				\$101,250.00
	<i>GRP - 1 Bedrooms (\$870 per month X 50 units)</i>	\$870	50	\$43,750.00	
	<i>GRP - 2 Bedrooms (\$1150 per month X 50 units)</i>	\$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
<b>Property B: Initial Estimate of Units</b>					
D	Monthly GRP for Property A units at Property B market rents, by unit type				\$100,775.00
E	<i>GRP - 1 Bedrooms</i>	\$900	48	\$43,200.00	
F	<i>GRP - 2 Bedrooms</i>	\$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%
	<i>Size the units at Property B so the budget neutrality indicator is 100% or less</i>				
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 GRP for Property B does not exceed GRP 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).

## UNIT SIZING AND TRANSFER OF BUDGET AUTHORITY

### 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 will often be greater than 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 does “within the lesser of five percent or five units” in Section V.D, paragraph 3, mean? **REVISED: April 22, 2016***

**Response:** As the Notice states, “the number of units supported by the budget authority at Project B should be substantially the same...as the number of units supported by the budget authority at Property A.” When there is a reduction in units, there is a test to determine if the reduction exceeds the threshold of “within the lesser of five percent or five units.” If the reduction does not meet this test there are additional criteria that must be met. The threshold of “within lesser of five percent or five units” means that for projects with 100 terminating units or more, the unit reduction threshold is always limited at 5. For projects with fewer than 100 terminating units, the 5% threshold will be the limitation (e.g.,  $95 \times 0.05$ ). If the reduction exceeds the threshold, the request 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 V.D of the Notice.

8(bb) transfer Scenario 1:

Project A's budget authority funds 130 units  
5% of 130 is 6.50 units  
The reduction in units cannot be more than 5

8(bb) transfer Scenario 2:

Project A's budget authority funds 28 units  
5% of 28 is 1.4 units (rounded up)  
The reduction in units cannot be more than 2

5. ***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.

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

**Response:** No, Headquarters must approve all transfers.

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

**Response:** No.

8. ***Can an 8bb transaction transfer the budget authority in phases to Project B as newly constructed units are put on line? **NEW: April 22, 2016*****

**Response:** The Owner should include any plan to perform a transfer of budget authority in phases as part of their proposal to the local HUD Field Office. Please reference Section V.B.4 for guidance on phased-in transfers.

9. ***We have a proposed Project B with Rural Development loans and partial project based RD assistance (similar to section 8). The 8bb transfer would go into market rate/non-subsidized units. Would any of these variables prevent this property from being a Project B? **NEW: April 22, 2016*****

**Response:** No, as long as Project B meets the other eligibility requirements, the RD loans and RD assistance will not prevent it from being a candidate for Project B.

10. ***Has Headquarters approved the transfer of budget authority across state lines? **NEW: April 22, 2016*****

**Response:** Yes. Headquarters reviews these requests on a case-by-case basis. Headquarters also addresses the unique contract administration actions specific to transferring budget authority across state lines.

## RENTS

11. ***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? **REVISED: April 22, 2016*****

**Response:** If Property B intends to renew the contract under Option One or Four then use market-level rents for Property B as established by an RCS. If Property B intends to renew the contract under Option

Two, then use the budget justified rents, limited to RCS rents. 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.

**12. 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.

## TENANTS AND RELOCATION

**13. Do there need to be available non-subsidized units at Property B for all tenants in Property A who wish to move?**

**Response:** The number and type of contract units at Property B must accommodate all Property A tenants wishing to relocate to Property B. Tenants can be “over-housed” at Property B to accommodate all tenants who decide to move until an appropriate unit type becomes available.

## CONTRACT EXPIRATIONS, TERMINATIONS, AND OPT-OUTS

**14. 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.

**15. 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.

**16. The owner of one of the properties in my portfolio has indicated he/she may opt out at the end of the one-year contract. What should I do? **REVISED April 22, 2016****

**Response:** One year should provide sufficient time to discuss with the Owner how they want to proceed, including the option to terminate the contract by mutual agreement with HUD and participate in the 8(bb) transfer of budget authority. Beginning this discussion early will help to prevent the need for a short-term renewal of Owner A’s contract.

17. Does issuing a short-term contract trigger a rent adjustment, which would change the GRP and the unit sizing calculation? **NEW: April 22, 2016**

**Response:** No. The short-term contract would be renewed at current rents.

## ENVIRONMENTAL REVIEW

18. *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."

19. *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.

20. *What is the shelf life of the other environmental information that Owner B is required to submit, such as information on historic preservation or wetlands? NEW: April 22, 2016*

**Response:** The ASTM E 1527 shelf-life standard applies: new information should be submitted if over a year old, and if over six months old, the information should be updated.

21. *For a Project B that is New Construction, does the Phase I ESA have to be completed before construction begins? NEW: April 22, 2016*

**Response:** Yes.

22. *For a Project B that is already under construction when does the Phase I ESA have to be completed? NEW: April 22, 2016*

**Response:** A Phase I ESA should have been completed prior to commencement of construction, whether it was FHA financed or not. Also, please reference the ASTM E 1527 shelf-life standard for the Phase I ESA.

23. *Can an owner of a Project B that currently does not have any affiliation with HUD (no FHA insurance, no HAP contract) order the Phase I Environmental Assessment after the transaction has been conditionally approved with a condition that the HUD-4128 is completed and approved? NEW: April 22, 2016*

**Response:** No. Owner B must submit the Phase I with the application. Also, please reference the ASTM E 1527 shelf-life standard for the Phase I ESA.



## PD&R AND FHEO REVIEW

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

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

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

**Response:** Details on current tenants such as their names and ages are not necessary. Field Economists will review the following in determining demand for additional affordable housing: (1) market analysis showing there are eligible families in the area; (2) the number of current tenants and/or prospective tenants on the waiting list at Project A who are eligible for Section 8 assistance and intend to relocate to Project B; and (3) the number of prospective tenants on the waiting list at project B who are eligible for Section 8 assistance.

**26. If a transaction results in a reduction in units that exceeds the 5% or 5 unit threshold, the Notice requires PD&R to determine that the transfer will result in a material improvement in the location of Project B; or when Project B is in the same Small Area Fair Market Rent (SAFMR) area as Project A, the field office must demonstrate that a reconfiguration of units is necessary due to the average vacancy rate in a given unit type being at least 25 percent for at least 24 months. If the units are moving from one good area to another good area, does that mean we can transfer the budget authority? **NEW: April 22, 2016****

**Response:** Maybe. If the justification for exceeding the unit reduction threshold is a material improvement in the location of Project B, we recommend that early in the process the account executive contact PD&R and request an initial test for material improvement, such as a poverty rate comparison.

**27. How is minority concentration defined as referenced in Section VI.A.6.d.?**

**NEW: April 22, 2016**

Minority concentration is defined similar to Minority Neighborhood as found at the HUD Glossary: [https://www.huduser.gov/portal/glossary/glossary\\_all.html](https://www.huduser.gov/portal/glossary/glossary_all.html)

**28. Can the review by FHEO and PD&R occur simultaneously? **NEW: April 22, 2016****

**Response:** No. PD&R needs the complete package to complete their review. Please reference Section VIII.B for guidance on the PD&R Field Economist review.

## REAC SCORES AND INSPECTIONS

**29. Can an inspection from another State or Federal Agency (such as Rural Development) be used in lieu of a REAC inspection for an 8(bb) Property B?**

**Response:** At this time there are no other Federal agencies that conduct UPCS inspections on behalf of HUD. Some State Housing Finance Agencies (HFAs) that participate in the Physical Inspection Alignment Pilot Program have had their inspectors become UPCS certified through the Department's certification program. These inspectors must use HUD's inspection software (4.0), and upload the inspection to REAC so that it is evaluated and scored before it is released to the owner. The HFA inspectors that are UPCS certified conduct inspections on behalf of HUD in cases where there is an overlap in state and federal assistance programs. For instance, if a project has both LIHTC and a Section 8 HAP contract both HUD and the HFA may be obligated to conduct a physical inspection at that project. The Physical Inspection Alignment Pilot is an attempt to eliminate the duplication of

inspections by having one party conduct the inspection using a protocol (UPCS) that is acceptable to both parties and then sharing the result. When an HFA conducts the inspection as part of the pilot they pay for the inspection.

**30. How do we submit another agency's inspection to REAC for evaluation and scoring?**

**Response:** If the individual doing the inspection has completed the required training and is certified to complete the inspection, the Department will issue them the equipment and software to enable them to upload the inspection results directly into the REAC system. More detailed information about the certification process and the software can be found on the REAC website at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/reac/products/prodpass/dcd4.0](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/prodpass/dcd4.0)

**31. For new construction and Property Bs that are not HUD-affiliated, can the REAC inspection be ordered before the 8(bb) is submitted (since it takes some time for a REAC inspection to be conducted)?**

**Response:** No. If the 8(bb) application is otherwise approvable, you will receive a conditional approval of the 8(bb) transfer from Headquarters, requiring that a REAC inspection be ordered. If the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD.

**32. How is a REAC inspection requested, especially when there is no record in iREMS for Project B yet?**

**Response:** The first step is for the Branch Chief to create a "dummy" project in iREMS. This can be done by using the "project add" feature and inputting the name and address of Project B in iREMS and the assigned Account Executive. The Branch Chief should also use the Servicing Screen tab to show that the project has an active use agreement. This will make the project "Active" so that REAC-PASS will be able to generate an inspection ID. The Branch Chief will notify the Physical Inspection Coordinator in the region about the request, and must remember to later mark the use agreement as terminated, whether the 8(bb) transfer goes through or not.

The second step is to send Brandt Witte, in HQ-OAMPO, the following information regarding Project B:

- Project name
- Address
- Number of buildings
- Number of units
- Owner and management agent contact information
- Copy of the Commitment from Property B to receive PBCA budget authority

This information will be passed on to REAC-PASS so that an inspection can be scheduled with the owner/agent. A date can normally be scheduled within 2-3 weeks of receipt of this information.

**33. Would HUD consider waiving the requirement in Section VI. C., paragraph 1, that requires a REAC inspection and score above 60 if Project B is not a HUD-Affiliated property before the transaction?**

**Response:** No we would not. We would follow the process outlined in FAQ 32.

**34. In the case where Project B is a new construction project developed under an FHA mortgage program, i.e. Section 221(d)(4), can the HUD-executed Permission to Occupy be used to determine the units meet HUD's physical condition standards in lieu of a REAC inspection, allowing the transfer to proceed?**

**Response:** Yes, the HUD-executed Permission to Occupy is sufficient to allow the transfer to proceed, and the project will begin its regular cycle REAC inspections from the date of final endorsement.

**35. Does Section V.C., paragraph 4, which discusses curing of deficiencies in Project A if it will continue to be HUD-Affiliated, only apply if the project has a below 60 score?**

**Response:** Yes, if the score is below 60, the deficiencies must be cured or a plan must be approved by HUD that will result in cure of those deficiencies within a timeframe acceptable to HUD. If the score is 60 or above, then the owner only has to correct any exigent health and safety (EHS) deficiencies within three business days.

**36. If Property B becomes due for a REAC inspection during the 8(bb) process (e.g., between the submission and approval steps), is this new inspection required?**

**Response:** Yes. The 8(bb) process does not stop the clock on the required REAC inspection schedule. There must be an up-to-date inspection with a score of 60 or above (or Owner B must submit a plan that is acceptable to HUD to correct any identified deficiencies) to approve the 8(bb) transfer. Projects that score between 90 -100 must be inspected at least once every three years. Projects that score from 80-89 must have an inspection at least once every two years. And projects with a score of 79 or below must have an inspection at least once a year.

### THIRD-PARTY AGREEMENTS

**37. 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.

**38. Can an owner sell their HAP contract?**

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

### MANAGEMENT AND OCCUPANCY REPORT (MOR)

**39. Must the Owner of Project A submit copies of the last 3 MOR Reports with the application if Project A will continue to be HUD-Affiliated and if any section of its last three MORs was rated less than Satisfactory? **NEW: April 22, 2016****

**Response:** If the MOR findings are closed, then Owner A does not need to submit them. If there are any open MOR findings, then the Owner A must submit the MOR and address how they are closing any open findings. This requirement also applies in cases where there has been a change in ownership.

If you have a question about Transferring Budget Authority under Section 8(bb)(1), please submit it to [8BBor214questions@hud.gov](mailto:8BBor214questions@hud.gov)