




Berkeley Housing Authority

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Office of the Executive Director

Item 5D
INFORMATION
June 10, 2010

To: Honorable Chairperson and
Members of the Berkeley Housing Authority

From:  Tia M. Ingram, Executive Director

Subject: Report providing information on Re-Housing Options for “over-housed” and “over-income” residents in the 75 units of BHA owned large family rental units with Section 8 Project Based assistance, including financial implications

On April 23, 2010, as part of the LIPH Disposition Workshop, the Board asked staff to return with a report on the re-housing options for “over-housed” and “over-income” residents in the 75 units of BHA owned large family low-income rentals with Section 8 Project Based assistance, including the financial implications of such. The regulations governing the Project Based Voucher Program are found at 24 Code of Federal Regulations 983.251.

Definitions

Over-housed is used to identify a family occupying a unit with more bedrooms than required, per the current subsidy/occupancy standard which provides one-bedroom for the head of household (and spouse if any) and one additional bedroom for every additional two people, regardless of age, gender or generation.

Over-Income is applied to any family whose gross annual income (all sources not excluded by regulation) is greater than 80% Area Median income.

Regulatory regulation refers to a policy adopted by the U.S. Department of Housing and Urban Development (HUD), and the Department (field office or headquarters) has the authority to grant waivers.

Statutory regulation refers to a policy that was adopted by Congress, and the Department (HUD) does not have the authority to modify the requirement or grant a waiver.

Regulations governing options for re-housing “over-housed” families

1. Protection of in-place families (24 CFR 983.251(b)(2)). In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one

2. requiring rehabilitation is occupied by an eligible family on the proposed selection date, the in-place family must be placed on the PHA's waiting list.and once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project.

Effectively, says BHA must provide the family assistance in an appropriately sized unit, including granting preferential treatment on any wait list; and BHA cannot continue assisting the family in a unit for which it is not qualified.

3. Housing Assistance Payment Contract for the Project Based vouchers (24 CFR 983.203(c)). The HAP contract must include information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit (thus, every unit would have to be identified based on the number of bedrooms).

Effectively says BHA must contract with the owner (and tenant), based on the actual bedroom size of the unit.

4. Project Based Assistance (24 CFR 983.259). The assistance is tied to the unit, thus the family occupying the unit must qualify for the number of bedrooms in the unit.

Unlike the Section 8 Tenant Based program where an owner can opt to accept less rent by charging rent based on the family voucher size (versus the unit size), this is not allowed in the Project Based Program.

5. Over-housed families (24 CFR 983.259(b)(2)). When a family is housed in a unit with more or fewer bedrooms that are in the unit with Project Based assistance, the PHA (subject to its Administrative Plan) must offer assistance in an appropriately sized unit via:

- (a) Other project-based housing assistance (e.g. , by occupancy of a public housing unit);
- (b) Tenant-based rental assistance under the voucher program; or
- (c) Other comparable public or private tenant-based assistance (e.g. , under the HOME program)

Regulations governing options for re-housing "over-income" families

1.Public Housing Family Rent 24 CFR 960.253(a). In the Low Income Public Housing Program families have the option of paying 30% of adjusted monthly income for rent or selecting the "Flat Rent" option.

2.Flat Rent (24 CFR 960.253(2)(b)) is a rent established for a unit in the Public Housing inventory that is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

3.Section 8 Family Rent. In the Section 8 program a family pays a minimum of 30% of income for rent. At the initial contract the family can pay up to 40% of adjusted income for rent; thereafter, there is no limit on the percentage of income a family can pay.

4.Continued Eligibility/Income Limit. An otherwise eligible family housed under a S8 Housing Assistance Payment (HAP) Contract continues to be an active participant as long as there is a \$1

monthly payment to the landlord. When the family's 30% equals or exceeds the contract rent, there is a six month grace period, after which the family's participation in the Section 8 Program is terminated.

Thus: a family that is housed in public housing, but paying a "flat Rent" may not be eligible for admission to the Section 8 Program if 30% of adjusted monthly income is equal to or greater than the contract rent for the privately owned rental unit.

4. Occupancy by Over-Income families (24 CFR 960.503). A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions are satisfied:

- (a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;
- (b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;
- (c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;
- (d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and
- (e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

Financial Implications for re-housing "over-housed" and/or "over-income" families

Attached please find the detailed analysis prepared by our consultant team Scott Jepson/Eric Novak, EJP/Praxis, detailing the significant cost variances if BHA were to obtain the required waivers or otherwise find a way to allow the existing households to remain residents in one of the 3 and 4 bedroom units, post disposition.

Conclusion

We vetted the questions raised with regard to various options that would allow for rehousing of all of the existing households. We sought legal counsel from the law firm of Goldfarb and Lipman, and we also sought legal counsel from the office of Steve Holmquist, Attorney at law, and former high ranking HUD official. Based on all the available information we conclude that while one or more waivers may be available, even raising the questions would raise concerns for the HUD Inspector General, and the likelihood of obtaining approval would be minimal.

Attachments:

1. CFR 983.251(b)(2)
2. CFR 983.203(c)
3. 24 CFR 983.259
4. 24 CFR 983.259(b)(2)
5. 24 CFR 960.253(a)
6. 24 CFR 960.253(2)(b)
7. 24 CFR 960.503
8. EJP/Praxis Financial Analysis

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Title 24: Housing and Urban Development

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart F—Occupancy

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§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?* (1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.

(3) The protections for victims of domestic violence, dating violence, and stalking in 25 CFR part 5, subpart L, apply to admission to the project-based program.

↙ (b) *Protection of in-place families.* (1) The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date.

↙ (2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (However, the PHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

(c) *Selection from PHA waiting list.* (1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

- (5) The PHA may place families referred by the PBV owner on its PBV waiting list.
- (6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.
- (7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (see 24 CFR 8.26 and 100.202).
- (d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.
- (1) *Preference limits.* (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- (ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- (iii) For whom such services cannot be provided in a nonsegregated setting.
- (2) Disabled residents shall not be required to accept the particular services offered at the project.
- (3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.
- (e) *Offer of PBV assistance.* (1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.
- (2) If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.
- (3) The PHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:
- (i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;
- (ii) Deny any admission preference for which the applicant is currently qualified;
- (iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA selection policy;
- (iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008]

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Title 24: Housing and Urban Development

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart E—Housing Assistance Payments Contract

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§ 983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

(c) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per building cap (as described in §983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and

(i) The initial rent to owner (for the first 12 months of the HAP contract term).

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Title 24: Housing and Urban Development

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart F—Occupancy

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§ 983.259 Overcrowded, under-occupied, and accessible units.

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

(1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* (1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (e.g. , by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (e.g. , under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the

wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA.

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(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

✓ (2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (e.g. , by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (e.g. , under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the

wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA.

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Title 24: Housing and Urban Development

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

Subpart C—Rent and Reexamination

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§ 960.253 Choice of rent.

(a) *Rent options*—(1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with §5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see §5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

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PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

Subpart C—Rent and Reexamination

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§ 960.253 Choice of rent.

(a) *Rent options*—(1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

✓ (2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with §5.630 of this title.

✓ (b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see §5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

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e-CFR Data is current as of May 28, 2010

Title 24: Housing and Urban Development

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

Subpart E—Occupancy by Over-Income Families or Police Officers

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§ 960.503 Occupancy by over-income families.

A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions are satisfied:

- (a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;
- (b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;
- (c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;
- (d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and
- (e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

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PRAXIS CONSULTING GROUP, LLC
SERVICES TO THE AFFORDABLE HOUSING COMMUNITY
DEVELOPMENT FINANCE
PROJECT MANAGEMENT
RESEARCH & EVALUATION

MEMORANDUM

Date: May 24, 2010

To: Tia Ingram, Executive Director, Berkeley Housing Authority
Kathleen Simms, Rosewood Real Estate Services

From: Eric Novak

CC: Scott Jepsen, EJP Consulting

Re: Berkeley Housing Authority—Analysis of Impact of Forgoing Full PB Voucher Rents in Order to Match Current BHA Household Sizes

You had requested a brief analysis of financial impact of the BHA serving its existing resident population by accepting a lower payment standard in its current housing. In other words, treating 4- and 3-bedroom units permanently as 1- and 2-bedroom units for the purposes of the project-based HAP contract.

Background

Based upon the research prepared by Jennifer Bell of Goldfarb & Lipman, we concluded that the BHA does not have the flexibility that the Oakland Housing Authority had to allow residents to stay in their current unit and to accept a lower payment standard temporarily. Oakland's plan for its scattered-site housing is not a preservation plan. The units do not carry debt or rely on voucher income to finance the renovation of the housing.

According to Ms. Bell, if the BHA were to change the occupancy standard for its 75 LIPH/RHCP units, that standard would need to be enforced across the entire 1,650 + HCV portfolio. So this option does not appear to be viable.

The BHA does have the option of "labeling" some of its 3- and 4-bedroom units as 1- and 2-bedroom units, so that the current residents could stay under current occupancy standards. However, that lower payment standard for these units would get locked in with the HAP contract. The BHA or developer could not place a larger family in the unit later and receive a higher payment.

The BHA requested that EJP/Praxis calculate the financial impact of re-housing the entire existing resident population based upon the unit sizes needed following existing occupancy standards.

Profile of Existing BHA Resident Population

OPC reviewed November 2009 recertification data from the BHA in preparing the relocation section of the Inventory Removal Application. Based upon this data, the unit sizes needed to re-house the 68 existing BHA LIPH/RHCP households were as follows:

<u>Unit Size Needed</u>	<u>#</u>	<u>%</u>
1-bedroom	5	7.35%
2-bedroom	24	35.29%
3-bedroom	32	47.06%
4-bedroom	7	10.29%
Total	68	100.0%

Of this population, 4 households were over-income, requiring either a 3-bedroom (3) or 4-bedroom (1) unit.

The unit mix of the existing BHA LIPH/RHCP portfolio is as follows:

<u>Existing Portfolio</u>	<u>#</u>	<u>%</u>
3-bedroom	44	58.67%
4-bedroom	31	41.33%
Total	75	100.0%

Based on the above information, and including the 4 over-income households, we arrived at the following unit mix for the portfolio:

<u>Revised Unit Mix</u>	<u>#</u>	<u>%</u>
1-bedroom	5	6.67%
2-bedroom	24	32.0%
3-bedroom	32	42.67% (including 3 non-PBV units)
4-bedroom	14	18.67% (including 1 non-PBV unit)
Total	75	100.0%

(See attached Profile of BHA Resident Population.)

Financial Impact of New Unit Mix

If the BHA were to lock in the lower payment standard based upon the revised BHA unit mix, the financial impact would be substantial. The projected Year 1 rental revenue would drop from \$2,107,664 to \$1,671,223, or \$436,441 (20.1%).

Assuming 15-year mortgage financing for the renovation of the BHA portfolio, the amount of debt the project could support would drop from \$10,930,056 to \$7,775,915, or \$3,154,141, a 28.9% drop. The projected proceeds that might be available to the BHA under this scenario would drop from \$3,675,000 to \$950,000, a \$2,725,000 or 74.1% drop. (See attached Pro Forma.)

Assuming 10-year mortgage financing (not shown here), the amount of debt the project could support would drop from \$8,498,769 to \$6,046,236, or \$2,452,533, a 28.9% drop. Assuming no acquisition payment to the BHA, the project financing would still be approximately \$650,000 short.

BERKELEY HOUSING AUTHORITY

BHA RESIDENT PROFILE (BASED UPON OPC RELOCATION DATA 11/09)

HOUSEHOLD SIZE

1-PERSON	3	4.41%
2-PERSON	6	8.82%
3-PERSON	20	29.41%
4-PERSON	18	26.47%
5-PERSON	10	14.71%
6-PERSON	11	16.18%
7-PERSON	0	0.00%
8-PERSON	0	0.00%
TOTAL	68	100.00%

UNIT SIZE NEEDED

1-BEDROOM	5	7.35%
2-BEDROOM	24	35.29%
3-BEDROOM	32	47.06%
4-BEDROOM	7	10.29%
TOTAL	68	100.00%

UNIT SIZE NEEDED (OVER INCOME HOUSEHOLDS)

1-BEDROOM	0	0.00%
2-BEDROOM	0	0.00%
3-BEDROOM	3	75.00%
4-BEDROOM	1	25.00%
TOTAL	4	100.00%

INCOME TIERS

0-14.99% AMI	17	25.00%
15% - 24.99% AMI	15	22.06%
25% - 34.99% AMI	14	20.59%
40% - 59.99% AMI	16	23.53%
60% - 79.99% AMI	2	2.94%
80% + AMI	4	5.88%
TOTAL	68	100.00%

**BHA LIPH/RHCP Scattered Site
Berkeley, CA**

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	Scenario 1	Scenario 2
Unit Mix		
RENTAL		
PBV Contract Rental Units		
1-bedroom	5	0
2-bedroom	24	0
3-bedroom	29	44
4-bedroom	13	31
Market Rate Units		
1-bedroom	0	0
2-bedroom	3	0
3-bedroom	1	0
4-bedroom	0	0
Total Units	75	75
75 Rental Development-- Matching Current BHA Needed Unit Sizes--15 Year Financing		75 Unit Rental Development-- Leaving Existing Unit Mix As Is--15 Year Financing
Approximate Acreage	0	0
Residential SF	87,925	87,925
Garage SF	0	0
Community Building SF	0	0
Sales Proceeds to BHA	950,000	3,675,000
Development Costs per unit	9,199,297	12,360,283
	122,657	164,804
Funding Sources		
Sales Proceeds	0	0
1st Mortgage	7,775,915	10,930,056
2ND MORTGAGE	0	0
LIHTC Equity	0	0
Existing Reserves	0	0
HOME, HTF, CDBG	700,000	700,000
FHLB AHP Funds	723,382	730,227
Total Sources	9,199,297	12,360,283
Funding Gap	0	0
Year One Project Cash Flow	170,360	239,463

**BHA LIPH/RHCP Scattered Site
Berkeley, CA**

SCENARIO DESCRIPTION: 75 Rental Development--Matching Current BHA Needed Unit Sizes--15 Year Financing

Number of Units	75
Grossing Factor on Res SF	0.00%
Project Acreage	0 acres
Residential SF	87,925 SF
Community Building SF	0 SF

CONSTRUCTION LOAN SIZING	
Total Development Cost	9,199,297
Less Fees and Reserves	(2,126,996)
Less 50% of equity	0
Less soft funds	(1,423,382)
Estimated Loan Amount	5,648,920

PERMANENT LOAN SIZING	
Base Year Rental Revenue	1,671,223
Less Vacancy (@ 5%)	(83,561)
Base Year Expenses	(565,500)
Net Operating Income	1,022,162
Debt Service Coverage	1.20
Monthly Payment	70,983
Allowable Debt	7,775,915
Year 1 Cash Flow	170,360

5,648,919

LIHTC SIZING		
Eligible Basis	Acquisition	Const.
QCT/DDA	0	7,609,379
% LIHTC Units	0	100%
Adj. Basis	0	0%
Monthly Rate	3.29%	3.29%
Projected Credits	0	0
Estimated Raise	0	0.700
LP Share	0	99.99%
Estimated Tax Credit Equity	0	0

DEVELOPMENT SOURCES	Total	Rate	DSC	Amortization
Sales Proceeds	0			
1st Mortgage	7,775,915	7.25%	1.20	15
2ND MORTGAGE				
LIHTC Equity	0			
Existing Reserves	0			
HOMIE, HITF, CDBG	700,000			
FHLB AHP Funds	723,382			
Total	9,199,297			

DEVELOPMENT USES	Total	Per Unit	Per SF	Notes	Eligible TC Basis
Acquisition	0	0	0.00		0
Acquisition-Land	0	0	0.00		0
Acquisition -Buildings	950,000	12,667	10.80		760,000
Demolition and Abatement	0	0	0.00	0 per unit	0
Hard Costs					
Hard Cost--Off-Site Sitework	0	0	0.00	estimate	0
Hard Costs--On-Site Sitework	0	0	0.00	0 per acre	0
Hard Costs-Residential Buildings	3,974,000	52,987	45.20	0.00 per SF	3,974,000
Hard Costs-Community Center	0	0	0.00	0.00 per SF	0
General Requirements	238,440	3,179	2.71	6.0% of hard cost	238,440
Contractor Overhead	79,480	1,060	0.90	2.0% of hard cost	79,480
Contractor Profit	238,440	3,179	2.71	6.0% of hard cost	238,440
FF&E	0	0	0.00	0 per unit	0
Hard Cost Contingency	453,036	6,040	5.15	10.0% of hard cost	453,036
Soft Costs					
Architectural & Engineering	158,563	2,114	1.80	3.5% of hard cost	158,563
Building Permit + Impact Fees	45,304	604	0.52	1.0% of hard cost	45,304
Legal	75,000	1,000	0.85	estimate	37,500
Relocation	450,000	6,000	5.12		450,000
Other Soft Costs	49,834	664	0.57	1.0% of hard cost	37,375
Financing Costs					
Construction Loan Fees	70,612	941	0.80	1.25% of loan amount	70,612
Construction Loan Interest	211,835	2,824	2.41	7.5% rate	148,284
Permanent Loan Fees	77,759	1,037	0.88	1.00% of loan amount	0
Fees and Reserves	0	0	0.00		0
Operating Reserve	708,651	9,449	8.06	6 mo. debt + exp.	0
PBV Reserve	500,000	6,667	5.69	estimate	0
Developer Fee	918,345	12,245	10.44	15.0% of TDC	918,345
Total	9,199,297	122,657	104.63		7,609,379

		# of Units	% of Units	Avg. Unit SF	PBV/ LIHTC Unit Count	LIHTC Only Count	Market Unit Count	Max. LIHTC Rent	Less Utility Allow.	Allowable LIHTC Rent	PBV Subsidy * Rent	Total PBV Rent	Total Market Rent	Monthly Revenue	Yearly Revenue
One Bedroom		5	7%	1172.3											
	15% AMI	0						251	(71)	180	1,143	1,323		0	0
	30% AMI	0						502	(71)	431	892	1,323		0	0
	50% AMI	5			5			837	(71)	766	558	1,323		6,617	79,404
	60% AMI	0						1,004	(71)	933	390	1,323		0	0
	market	0						N/A					0	0	0
Two Bedroom		24	32%	1172.3											
	15% AMI	0						302	(95)	207	1,351	1,557		0	0
	30% AMI	0						603	(95)	508	1,049	1,557		0	0
	50% AMI	24			24			1,005	(95)	910	647	1,557		37,378	448,531
	60% AMI	0						1,206	(95)	1,111	446	1,557		0	0
	market	0						N/A					N/A	0	0
Three Bedroom		32	43%	1172.3											
	15% AMI	0						348	(139)	209	1,892	2,101		0	0
	30% AMI	0						696	(139)	557	1,544	2,101		0	0
	50% AMI	29			29			1,161	(139)	1,022	1,080	2,101		60,941	731,287
	60% AMI	0						1,393	(139)	1,254	848	2,101		0	0
	market	3						N/A					1,200	3,600	43,200
Four Bedroom		14	19%	1172.3			3								
	15% AMI	0						389	(175)	214	2,386	2,599		0	0
	30% AMI	0						777	(175)	602	1,997	2,599		0	0
	50% AMI	13			13			1,295	(175)	1,120	1,479	2,599		33,792	405,506
	60% AMI	0						1,554	(175)	1,379	1,220	2,599		0	0
	market	1						N/A					1,500	1,500	18,000
Total		75		87,925	71	0	4							137,210	1,646,525
				1172.33	avg. SF/unit										

Other Income @ 1.50% 24,698

Total Income 1,671,223

* HAP Rental Subsidy based upon 110% of FMR

SCENARIO DESCRIPTION: 75 Unit Rental Development--Leaving Existing Unit Mix As Is--15 Year Financing

DEVELOPMENT SOURCES	Total	Rate	DSC	Term
Sales Proceeds	0			
1st Mortgage	10,930,056	7.25%	1.20	15
2ND MORTGAGE				
LIHTC Equity	0			
Existing Reserves	0			
HOME, HTF, CDBG	700,000			
FHLB AHP Funds	730,227			
Total	12,360,283			

DEVELOPMENT USES	Total	Per Unit	Per SF	Notes	Eligible TC Basis
Acquisition	0	0	0.00		0
Acquisition-Land	0	0	0.00		0
Acquisition - Buildings	3,675,000	49,000	41.80		2,940,000
Demolition and Abatement	0	0	0.00		0
Hard Costs					
Hard Cost--Off-Site Sitework	0	0	0.00	estimate	-
Hard Costs--On-Site Sitework	0	0	0.00	0 per acre	0
Hard Costs-Residential Buildings	3,974,000	52,987	45.20	0.00 per SF	3,974,000
Hard Costs--Community Center	0	0	0.00	0.00 per SF	0
General Requirements	238,440	3,179	2.71	6.0% of hard cost	238,440
Contractor Overhead	79,480	1,060	0.90	2.0% of hard cost	79,480
Contractor Profit	238,440	3,179	2.71	6.0% of hard cost	238,440
FF&E	0	0	0.00	0 per unit	0
Hard Cost Contingency	453,036	6,040	5.15	10.0% of hard cost	453,036
Soft Costs					
Architectural & Engineering	158,563	2,114	1.80	3.5% of hard cost	158,563
Building Permit + Impact Fees	45,304	604	0.52	1.0% of hard cost	45,304
Legal	125,000	1,667	1.42	estimate	62,500
Relocation	450,000	6,000	5.12	estimate	450,000
Other Soft Costs	49,834	664	0.57	1.0% of hard cost	37,375
Financing Costs					
Construction Loan Fees	107,450	1,433	1.22	1.25% of loan amount	107,450
Construction Loan Interest	322,349	4,298	3.67	7.5% rate	225,644
Permanent Loan Fees	109,301	1,457	1.24	1.00% of loan amount	0
Fees and Reserves					
Operating Reserve	881,409	11,752	10.02	6 mo. debt + exp.	0
PBV Reserve	500,000	6,667	5.69	estimate	0
Developer Fee	952,679	12,702	10.84	15.0% of TDC	952,679
Total	12,360,283	164,804	140.58		9,962,911

CONSTRUCTION LOAN SIZING	8,595,969
Total Development Cost	12,360,283
Less Fees and Reserves	(2,334,088)
Less 50% of equity	0
Less soft funds	(1,430,227)
Estimated Loan Amount	8,595,969

PERMANENT LOAN SIZING	239,463
Base Year Rental Revenue	2,107,664
Less Vacancy (@ 5%)	(105,383)
Base Year Expenses	(565,500)
Net Operating Income	1,436,781
Debt Service Coverage	1.20
Monthly Payment	99,776
Allowable Debt	10,930,056
Year 1 Cash Flow	239,463

LIHTC SIZING	Const.
Eligible Basis	9,962,911
QCT/DDA	100%
% LIHTC Units	0%
Adj. Basis	0
Monthly Rate	9.00%
Eligible Credits	0
Requested Credits	0
Estimated Raise	0.700
LP Share	99.99%
Estimated Tax Credit Equity	0

		# of Units	% of Units	Avg. Unit SF	PBV Unit Count	LIHTC Only Count	Market Unit Count	Max. LIHTC Rent	Less Utility Allow.	Allowable LIHTC Rent	PBV Subsidy * Rent	Total Market Rent	Monthly Revenue	Yearly Revenue
Two Bedroom		0	0%	900										
	15% AMI	0						302	(95)	207	1,351	1,557	0	0
	30% AMI	0						603	(95)	508	1,049	1,557	0	0
	50% AMI	0			0			1,005	(95)	910	647	1,557	0	0
	60% AMI	0						1,206	(95)	1,111	446	1,557	0	0
	market	0						N/A		N/A		N/A	0	0
Three Bedroom		44	59%	1,100	44									
	15% AMI	0						348	(139)	209	1,892	2,101	0	0
	30% AMI	0						696	(139)	557	1,544	2,101	0	0
	50% AMI	44						1,161	(139)	1,022	1,080	2,101	92,462	1,109,539
	60% AMI	0						1,393	(139)	1,254	848	2,101	0	0
	market	0						N/A		N/A		N/A	0	0
Four Bedroom		31	41%	1,275										
	15% AMI	0						389	(175)	214	2,386	2,599	0	0
	30% AMI	0						777	(175)	602	1,997	2,599	0	0
	50% AMI	31			31			1,295	(175)	1,120	1,479	2,599	80,581	966,977
	60% AMI	0						1,554	(175)	1,379	1,220	2,599	0	0
	market	0						N/A		N/A		N/A	0	0
Total		75		87,925	75	0	0						173,043	2,076,516
				1172.33	avg. SF/unit									

Other Income @ 1.50% 31,148

Total Income 2,107,664

* PBV Rental Subsidy based upon 110% of FMR

Project Name	BHA LIPH/RHCP Scattered Site
City	Berkeley
State	CA
PHA Name	Berkeley Housing Authority
QCT / DDA?	No
Equity Pricing Assump.	\$0.70
Monthly 70% Value	9.00%
Monthly 30% Value	3.29%

INCOME / RENT / COST DATA

Year	2009		Location		Oakland-Fremont, CA		Oakland-Fremont, CA	
	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
30% AMI	18,750	21,420	24,120	26,790	28,920	31,080	33,210	35,370
50% AMI	31,250	35,700	40,200	44,650	48,200	51,800	55,350	58,950
60% AMI	37,500	42,840	48,240	53,580	57,840	62,160	66,420	70,740

Year	2010		Location		Oakland-Fremont, CA	
	0 bdrm	1 bdrm	2 bdrm	3 bdrm	4 bdrm	5 bdrm
	963	1,162	1,377	1,867	2,312	100%
	1,156	1,394	1,652	2,240	2,774	120%

Utility Allowance Assumptions *						
Berkeley Housing Authority 6/30/2009 Rowhouse/Semi-Detached						
Rental	0 bdrm	1 bdrm	2 bdrm	3 bdrm	4 bdrm	5 bdrm
	N/A	N/A	71	95	139	175

* assume tenant-paid heat, hot water, cooking, electricity

MARKET RENT ASSUMPTIONS

1-bedroom	N/A
2-bedroom	N/A
3-bedroom	N/A

OPERATING EXPENSES ASSUMPTIONS

Admin. Costs	600 per unit
Payroll	2,200 per unit
Utilities (assumes unit metering)	1,250 per unit
Maintenance	1,700 per unit
Insurance	500 per unit
Taxes/PILOT	190 per unit
Management Fee	600 per unit
Replacement Reserves	500 per unit
Total	7,540 per unit

DEVELOPMENT COST ASSUMPTIONS

Hard Costs		
Site Work	0 acre	
Resid. Hard Cost	0.00 SF	
Comm. Bldg. Hard Cost	0.00 SF	
Townhouse Garage	0.00 SF	
FF&E	0 per unit	
General Conditions	6.00% of hard costs	
Overhead	2.00% of hard costs	
Profit	6.00% of hard costs	
Contingency	10.00% of total hard costs	
Soft Costs		
Arch & Engineer	3.50% of hard costs	
Fees and Permits	1.00% of hard costs	
Relocation	6,000 per unit	
Other Soft Costs	1.00% of hard costs	
Financing Costs		
Construction Loan Fees	1.25% of amount	
Construction Loan Rate	7.50%	
Conv. Const. Loan Fee	1.25% of amount	
Conv. Const. Loan Rate	7.50%	
Permanent Loan Fees	1.00% of amount	
Permanent Loan Rate	7.25%	
Term	15 years	
Amortization	15 years	
DSC	1.2	
Fees and Reserves		
Developer Fee	15% of TDC	
Operating Reserve	6 mo. debt + exp.	