**Project-Based Voucher Program Guidance for Owners/Developers**

Housing Authority of the County of Santa Cruz

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**Disclaimer**

This **Project-Based Voucher (PBV) Guidance for Owners** is provided as a courtesy to the public with general information about the Housing Authority of the County of Satna Cruz PBV Program.

This guide should not be used as an alternative to an understanding of the regulations of the Housing Choice Voucher (HCV) and PBV Programs at 24 CFR 982 and 983, and other HUD regulations as applicable.

It is the responsibility of the reader to confirm the accuracy of all information in this guidance prior to relying on it. The applicable federal/state/local regulations and most recently published version of the Housing Authority of the County of Santa Cruz HCV Administrative Plan prevail in all cases.

The Housing Authority is not responsible for actions taken by readers of this guidance if the reader relies solely on this guidance.

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## Housing Authority HCV Administrative Plan

HUD requires the Housing Authority to clarify certain discretionary policies in its HCV Administrative Plan, which includes discretionary elements of the PBV Program.

This guide contains general information that is not included in the Administrative Plan. Please refer to the Administrative Plan for more details about the discretionary policy items.

## Overview, Eligibility, Limits, and Funding

### Overview

The PBV Program allows a housing authority that already manages a tenant-based HCV Program to attach the vouchers to specific housing units. In the HCV Program, the family can use the voucher to receive rental assistance in a unit of their choice. In the PBV Program, the family must live in the unit with the attached PBV to receive assistance.

PBVs are intended to stimulate affordable housing development or preservation by acting as an operating subsidy or financing mechanism. The PBVs are typically layered on below-market, rent-restricted affordable housing units where the PBV tenant pays an affordable rent and the Housing Authority pays the difference between what the tenant can afford and the market rent to the owner. The subsidy paid by the Housing Authority helps the PBV owner leverage additional financing to build the project and/or to fund operating costs of the project, while maintaining a deep level of affordability for the resident.

PBVs may be provided to existing housing projects that already have residents or to new construction and rehabilitation projects that are not yet ready for occupancy.

Each housing authority has discretion on whether it chooses to operate a PBV Program.

### Funding & Limits

HUD does not allocate separate funding for the PBV Program and PBVs are pulled from the existing pool of HCVs that the Housing Authority has been authorized to use by HUD. As such, the Housing Authority may not be able to award new PBV commitments if the Housing Authority does not receive sufficient funding from HUD to support additional PBV commitments.

Additionally, HUD places a limit on the number of vouchers that can be used for the PBV Program. The Housing Authority is permitted by HUD to project-base up to 50% of its authorized vouchers, but the Housing Authority may choose to project-base less than 50% at its discretion due to funding limitations or other factors.

Within any given PBV project, the Housing Authority is authorized by HUD to attach PBVs to 100% of units in the project, but the Housing Authority may apply a lower limit at its discretion to newly awarded projects due to funding limitations or other factors.

### Accessibility Requirements

Projects must meet program accessibility requirements, which include compliance with the accessibility requirements of Section 504 of the Rehabilitation Act and implementing regulations at 24 CFR Part 8, Title II of the Americans with Disabilities Act (ADA) and implementing regulations at 24 CFR Part 35, as well as the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205, as applicable. In new construction projects, five percent (5%) of units, but no less than one, must be accessible for persons with mobility impairments, and two percent (2%) of units, but no less than one, must be accessible for persons with visual and/or hearing impairments. Existing and rehabilitated housing may be subject to different requirements. Projects that do not meet these requirements will be ineligible to execute a HAP Contract.

The Housing Authority may place a limit on the number of accessible units that an owner can attach its awarded PBVs to. Due to HUD requirements related to accessible units, this limit helps to ensure unit types are distributed in a way that supports both households with disabilities and the broader eligible population.

### Owner Eligibility

By submitting an application for PBVs, the owner certifies to their legal structure and that they are not suspended, debarred, or excluded by HUD. After submittal of the application, any changes to the owner's legal structure must receive the Housing Authority's written approval.

All owner entities that apply for and/or are awarded PBVs must exist at the time of the application. To-be-formed entities cannot apply for or receive an award of PBVs, but organizations that will be part of that to-be-formed entity may apply. The award may then be transferred to the to-be-formed entity upon its formation, provided that the original awardee is a member of the new entity.

The Housing Authority must approve any change in the owner entity through the issuance of a new conditional award letter.

## RFPs and Project Selection

Owners that seek PBVs must apply for them through a competitive application process. The Housing Authority will publish a request for proposals (RFP) on the Housing Authority website. The RFP may remain open indefinitely or may open and close at pre-determined times.

All projects that apply for PBVs will be scored in accordance with the current scoring criteria of the open RFP. The Housing Authority may award vouchers to all applicants that meet the threshold score, to a subset of the highest-scoring projects, or to no applicants. The Housing Authority reserves the right to not award PBVs, even if projects meet the threshold score.

The Housing Authority maintains an RFP interest list. When an RFP is updated, all persons on this list will be updated. Contact Eric C. Johnson at ericj@hacosantacruz.org to be added to the list.

## **Conditional Award of PBVs and Right to Rescind**

Successful applicants selected for an award of PBVs will be notified and issued a conditional award letter. The conditional award letter specifies the number of PBVs awarded, the voucher type, the population that the PBVs must serve, and other terms of the PBV award. The conditional award letter lists all conditions the owner must meet for the full award of PBVs and reservations of rights of the Housing Authority.

The owner must sign the conditional award letter to accept the conditions of award, as required by HUD.

The conditions of award may change at any time, and the Housing Authority may issue a new conditional award letter when the owner requests certain changes, including but not limited to, a change in the owner entity for partnership purposes, a change in the approved voucher mix, or an extension to a deadline. Each time a new conditional award letter is issued, the conditions of award and reservations of rights are updated to the most recent set.

The Housing Authority may rescind or withdraw the awarded PBVs for certain reasons, including but not limited to, a breach of any of the conditions of award, material changes to the project as specified in the application, insufficient funding, failure by the owner to meet a required deadline, failure by the owner to act in accordance with HUD regulations, or any other reason identified in the conditional award letter.

## **Environmental Review**

An environmental review under the National Environmental Policy Act (NEPA) is required for all new construction and rehabilitation PBV projects. The application of PBVs to an existing housing project does not itself trigger NEPA, but NEPA may still apply for a non-PBV related reason. It is the owner’s responsibility to know when NEPA may apply in these cases.

Owners must contact the responsible entity to complete NEPA requirements and receive environmental clearance from the responsible entity and/or HUD, as required. Environmental clearance may be, but is not limited to, an Authority to Use Grant Funds or a notice of categorical exclusion.

NEPA applies even if the project is exempt from the California Environmental Quality Act (CEQA). The Housing Authority is not responsible for knowing when another environmental review process would apply.

A NEPA review must be started prior to submission of the subsidy layering review.

## Subsidy Layering Review

To ensure that limited public funds are not oversubscribed, a subsidy layering review (SLR) is required for new construction or rehabilitation PBV projects when they receive any other source of government assistance, including but not limited to tax credits, grants, or loans. The SLR is performed after the project has received firm commitments of all funding/financing from all lenders/grantors.

The SLR process uses objective metrics to measure the level of funding to determine appropriateness. HUD may review common pro forma projections such as operating standards, development standards, debt coverage ratio, vacancy rates, rent increases, and cash flow.

Projects not utilizing Low Income Housing Tax Credits (LIHTC) will have the SLR conducted by HUD. Please prepare for 75 days from date of submission until completion of SLR review by HUD.

Projects utilizing LIHTCs may have the SLR conducted by California Tax Credit Allocation Committee (CTCAC) or HUD. Documentation must be submitted after the project receives a reservation of tax credits. Please note that CTCAC has no obligation to perform the SLR. If CTCAC is unable to perform the SLR, HUD will perform the SLR. The Housing Authority recommends doing the SLR through CTCAC if possible as CTCAC is generally faster at reviewing.

The SLR may take a significant amount of time and often involves revisions, so please plan accordingly. HACSC will coordinate any requests from the SLR reviewer with the owner, as needed.

The SLR certification for the project must be received by HACSC before the AHAP may be executed. If HUD/CTCAC believes that the project is not sufficiently funded or if the project is leveraging too many public funds, HUD/CTCAC may require project revisions or reduce the number of PBVs awarded to the project.

If the project receives additional government funding/financing after completion of the SLR, the owner must report this additional financing immediately to the Housing Authority as a new SLR may be required.

## Executing AHAP

The Agreement to Enter into a Housing Assistance Payments Contract (AHAP) is a contract that commits the Housing Authority to provide PBVs to an owner after the project is complete. An AHAP must be executed prior to a new construction or rehabilitation project doing any construction, including clearing of the land, and is required by the Housing Authority for such projects.

The AHAP is executed after the project has received environmental clearance and has been approved under SLR requirements. Projects will be expected to start construction within 90 days of execution of the AHAP and complete construction within 36 months.

The Housing Authority requires that an AHAP be executed within 36 months of the original notice of conditional award. Projects may receive up to two six-month extensions, which must be requested separately.

The Housing Authority will only execute an AHAP if the owner has working drawings and specifications that are fully approved by the permitting jurisdiction and for which a building permit has been or will be issued.

The AHAP is a standard HUD form with exhibit templates provided by the Housing Authority.

## Prevailing Wage and Labor Standards

New construction or rehabilitation projects with a conditional award of nine (9) or more PBVs are subject to the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, 29 CFR part 5, and other federal laws and regulations pertaining to labor standards

## Progress Reports

At least quarterly, the Housing Authority will request progress reports from all owners that have a conditional award of PBVs. The progress reports may ask for anticipated dates project milestones or updates on financing/funding.

Please note that completion of progress reports is required and failure to do so may result in rescission or the conditional award.

If there is a significant update between reports, such as a major project delay, please update the Housing Authority immediately rather than waiting for the next report cycle.

## Occupancy Planning

Approximately six months prior to anticipated occupancy, the Housing Authority will coordinate occupancy planning with the owner and/or the owner's property manager. The Housing Authority may provide specific lease-up instructions, which the owner and/or the owner's property manager must follow. This occupancy planning process is intended to coordinate the outreach and lease-up process and fill the units as quickly as possible.

The Housing Authority must approve the project's tenant selection plan, marketing plan, leasing flyers, or other leasing items prior to outreach and occupancy of the units.

All leasing materials must be available in both English and Spanish and paper versions of all materials must be made available to any interested party. Paper versions cannot only be made available on a reasonable accommodation basis, and online-only applications are not permitted.

For third-party referral-based PBV units except Veterans Affairs Supportive Housing (VASH), the owner and the referring organization are responsible for tenant outreach in accordance with the owner's requirements. For such units, the Housing Authority requires the owner and the referring organization to execute a Memorandum of Understanding (MOU) that specifies the referral process. The Housing Authority must approve this MOU.

For all other PBV units except VASH, the Housing Authority performs outreach and will generally inform families of availabilities through mailings at no cost to the owner. However, the Housing Authority may bill the owner for costs associated with a mailing if the owner needs to fill a PBV unit with a special population that is not explicitly identified by or served through the HCV Program, such as farmworkers.

For VASH PBV units, the owner coordinates with the Department of Veterans Affairs for outreach and receipt of qualified applicants. An MOU is not required in these cases.

## Unit Inspections

Prior to execution of the HAP Contract, all PBV units must pass the HUD housing inspection. These inspections will typically be scheduled two weeks after the certificate of occupancy is received that covers all prospective PBV units and all common areas that the PBV residents may access.

## Executing HAP & AHAP Certifications

The Housing Assistance Payments (HAP) Contract is the agreement between the Housing Authority and the owner that identifies the PBV units and establishes the operating subsidy. For new construction and rehabilitation projects, the HAP Contract is executed after the project is completed and all conditions of the AHAP and conditional award letter are met.

The HAP Contract is a standard HUD form with exhibit templates provided by the Housing Authority.

Prior to execution of the HAP Contract, owners must certify that the project was built in accordance with the AHAP, the working drawings, and labor standards. The owner must also certify that all NEPA mitigation requirements were met and provide a certificate of occupancy. All units must pass the HUD housing inspection.

Other certifications may be required by the Housing Authority on a case-by-case basis in accordance with the AHAP or Housing Authority policy.

**Leasing, Vacancies, and Transfers**

Upon approving a new family for the PBV unit under the owner's tenant selection plan, the owner should refer the family to the Housing Authority to begin the PBV eligibility determination. The owner should email referrals@hacosantacruz.org with the name of the applicant and the PBV unit number.

The owner may only lease PBV units to families that are eligible for the PBV Program, as approved by the Housing Authority. The owner should not execute a lease with the tenant until they have been approved by the Housing Authority for the PBV Program.

Please note that the owner may be required to sign certain documents prior to rental assistance being paid to the owner on the tenant's behalf. Housing Authority staff will tell you what documents are needed.

In some instances, a family currently occupying a PBV unit may be terminated from the PBV Program. When this occurs, the family becomes ineligible to reside in the PBV unit and the lease terminates automatically under HUD requirements. Upon termination, the owner must act in accordance with one of the three options below:

1. Remove the PBV unit from the HAP Contract and execute a new lease with the tenant
2. Request to substitute the PBV unit with a vacant unit of the same bedroom size in the same building
3. Evict/move the tenant and make the PBV unit available to a new PBV-eligible family

If the owner leases a PBV unit to the ineligible family, the owner may be out of compliance with the HAP Contract and may risk recapture of that PBV by the Housing Authority. The owner may also face other correction remedies.

The Housing Authority regularly monitors vacancies in PBV units to ensure effective utilization of its limited number of vouchers. If a PBV unit remains vacant for 120 days or more, the Housing Authority is permitted to remove the PBV unit from the HAP Contract. The Housing Authority is not required to provide prior notice of its intent to remove the voucher and may choose to exercise this option at any time after 120 days of vacancy. However, Housing Authority staff will generally discuss any extended vacancy with you prior to taking any action. If you have any difficulties leasing a unit, please notify the Housing Authority as soon as possible.

When a PBV unit becomes vacant, or when a PBV unit is imminently expected to become vacant, the owner must promptly notify the Housing Authority so that staff can begin outreach accordingly. If the owner is responsible for outreach, the Housing Authority expects the owner to promptly initiate this outreach.

If a family is terminated from the PBV Program, the Housing Authority considers the unit “vacant” upon the effective date of termination and the unit must be made available to another eligible household, as the unit is no longer receiving subsidy.

Please note that PBV tenants cannot be moved to other units for a period of greater than 30 days without prior notification to, and approval from, the Housing Authority.

If an accessible unit is offered to a family that does not require the accessibility features, the owner is expected to attach an addendum to the lease that clarifies that the family may be required to vacate the unit if a family that requires the features is identified. The Housing Authority will provide a standard addendum to use in these cases and must be return signed by the owner and the tenant. Accessible units may only be offered to families that do not require the features if approved by the Housing Authority.

The Housing Authority maintains a separate lease-up guidance document that is provided to the owner during the occupancy planning stage. This guidance can also be provided upon the owner’s request.

For LIHTC units only, the Housing Authority requires that the owner provides the completed TIC to determine income and assets for the PBV eligibility determination. The Housing Authority maintains a separate TIC guidance document that is provided to the owner during the occupancy planning stage as applicable. This document can also be provided to the owner upon request.

Please allow the Housing Authority 60 days to process an applicant for PBV eligibility.

## Consent to Assignment and Assignment Contracts

The Housing Authority may provide consent to assignment of the AHAP and/or HAP contract at the owner’s request.

All consents to assignment will only be provided on the Housing Authority-approved form and will not be on a custom form provided by the owner or lender. The Housing Authority will only provide one consent to assignment of the AHAP and one consent to assignment of the HAP contract.

The Housing Authority will not sign assignment contracts and/or make any additional commitments to the owner’s lender. The owner is expected to communicate this information with their lender.

## Administrative Fees & Legal Costs

The Housing Authority may charge administrative fees to PBV owners for staff time dedicated to managing the PBV Program.

The Housing Authority may ask PBV owners to reimburse the Housing Authority for any legal costs that it incurs related to requests from PBV owners for discretionary items. Examples of items that may result in the Housing Authority incurring a legal cost include requests to change to the PBV owner entity/conditional awardee, the execution of consents to assignment, requests for modifications to any standard Housing Authority forms and/or deviations to standard Housing Authority processes, and the execution of contracts (excluding AHAP and HAP contracts provided the standard process is followed).