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PH PROGRAM NEWS

PIH Issues Notice on PBV Subsidy Layering Reviews

Last Friday, HUD's Office of Public and Indian Housing (PIH) published a *Federal Register* notice titled "Administrative Guidelines: Subsidy Layering Review for Project-Based Vouchers." Highlights of the notice include the following:

- It updates guidelines and requirements for project-based voucher (PBV) subsidy layering reviews (SLR)
- It includes new PBV housing assistance payments (HAP) contract term provisions, as amended by the Housing Opportunity Through Modernization Act of 2016 (HOTMA)
- It provides SLR requirements for mixed-finance projects regardless of whether they include PBV assistance
- It updates expectations regarding cash flow, debt coverage ratios, net operating income, and operating expense trending requirements

The purpose of SLR is to ensure that HUD assistance made available to a project is not more than is necessary to make the PBV project feasible after taking into account assistance from other government sources. SLR are required only for proposed PBV new construction and rehabilitation projects prior to the execution of an agreement to enter into a HAP contract (AHAP), if there is other government assistance. SLR are not required when a project is already subject to a PBV HAP contract, even if it is recapitalized with outside funding, or when PBVs are the only governmental assistance provided to a development.

The notice also updates the safe harbor standards for development and operating costs. When performing a SLR, the applicable organization reviews the development and operating costs of a project to determine whether costs are within a reasonable range considering certain factors. Costs that fall within acceptable safe harbor standards may move forward, while those that do not will require additional justification and documentation. Safe harbor highlights include:

- General contractor fees: not to exceed 14 percent of hard construction costs.
- Developer fee: a maximum of 15 percent for PBV contract, up to 9 percent for PBV in mixed-finance project with no justification, above 9 percent and up to 12 percent with justification, and over 12 percent if the PHA receives the amount and is restricted for project costs or future phases.
- Debt coverage ratio: between 1.10 and 1.45. A trending analysis is used to evaluate the debt coverage ratio over time.
- Cash flow: may not exceed 10 percent of total operating expenses.
- Mixed finance projects that also include PBVs: the SLR is performed as part of the mixed-finance review process.

The notice includes appendices on PHA submissions required, a sample notice of intent to participate in subsidy layering reviews by housing credit agencies, and a sample housing credit agency certification.