

gathering and maintaining the data needed, and completing and reviewing the collection of information.

As HUD is furnishing a significant amount of data directly to the program participants, the burden in completing the Assessment Tool is reduced. Where HUD is not providing data, as noted earlier in this preamble, program participants are required to consider and in some cases utilize available local data and local knowledge. This refers to data already publicly available and reasonably easy to access. This does not refer to obscure data that may not be known or easily found, that requires an independent data or information collection effort such as a local survey, or that requires extensive analytical expertise or staff effort for instance in

manipulating data sets or developing a complex methodology for analyzing complex data that may be available. With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.

In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH,

whether in the Analysis section of the Assessment or in Section III of the AFH with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.

The Assessment Tool is available at http://www.huduser.org/portal/affht_pt.html.

Information on the estimated public reporting burden is provided in the following table:

REPORTING AND RECORDKEEPING BURDEN

CFR Section reference	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 5.154(d) (Assessment of Fair Housing)	* 4,388	1	With each Con Plan or PHA Plan.	200	877,600
Total Burden	877,600

* The number of respondents is based on the number of entities that will complete the version of the Assessment Tool that is the subject of this notice and is designed for use by entitlement jurisdictions other than States and joint submissions by entitlement jurisdictions and public housing agencies (PHAs) that are submitting a joint AFH. Entitlement jurisdictions that would use this template number 1,181. HUD is estimating that half of the PHAs, which number in total 4053, would opt for a joint submission but this estimate, 2026, may be high.

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by *November 25, 2014* to www.regulations.gov as provided under the **ADDRESSES** section of this notice.

Comments must refer to the proposal by name and docket number (FR-5173-N-02).

Following consideration of public comments submitted in response to this notice, HUD will submit for further public comment, for a period of 30 days, a version of the Assessment Tool that reflects consideration of the public comments received in response to this notice.

Dated: September 22, 2014.

Camille E. Acevedo,
Associate General Counsel for Legislation and Regulations.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5417-N-02]

Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This document provides Administrative Guidelines (Guidelines) which qualified Housing Credit Agencies (HCAs) must follow in implementing subsidy layering reviews in accordance with the requirements of the Housing and Economic Recovery Act of 2008 (HERA), in those cases where the HCA elects to conduct the review. In certain instances, described in this notice, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The requirements in this notice do not supersede the subsidy layering requirements of other Federal programs.

This notice sets forth the guidelines for conducting subsidy layering reviews for mixed-finance public housing projects and for newly constructed and rehabilitated structures combining other forms of government assistance with project-based voucher assistance under section 8 of the United States Housing Act of 1937 (1937 Act).

FOR FURTHER INFORMATION CONTACT: Luci Ann Blackburn, Urban Revitalization Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4134, Washington, DC 20410; telephone number 202-402-4190 (this is not a toll free number); or Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202-402-

4212 (this is not a toll free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary Chart

The remainder of this notice describes the current requirements regarding subsidy layering reviews for different development scenarios. The current legal requirements and HUD's policy, which are more fully described in this notice, are summarized for ease of reference in the following chart:

Type of project	SLR reviewer	Certification required under section 102(d) of the HUD Reform Act
PBV (without LIHTC), New Project	HUD	Yes.
PBV only (without LIHTC), Existing Project	SL Review not required	No.
PBV with LIHTC	HCA ¹ or HUD	If the HCA were to do the review, and the HCA's SL Review took into account proposed PBV assistance, certification would not be required. ² Otherwise, HUD must certify.
PBV with LIHTC and Mixed Finance	HCA ³ or HUD	Yes.
Mixed Finance without LIHTC	HUD	Yes.
Mixed Finance with LIHTC	HCA ⁴ or HUD	Yes, by entity performing review.
Mixed Finance with LIHTC/No HCA or HCA declines to do review.	HUD	Yes.

B. The Housing and Economic Recovery Act of 2008 (HERA)

HERA (Pub. L. 110-289, approved July 30, 2008) made numerous revisions to the Section 8 Project-Based Voucher program. On November 24, 2008, at 73 FR 71037, HUD published a **Federal Register** notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That notice provided an overview of key provisions of HERA that affect HUD's public housing programs, and identified those provisions that are self-implementing, requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. That notice also stated that HUD would be issuing implementing guidance on section 8(o)(13)(M)(i) of the 1937 Act (42 U.S.C. 1437f(o)(13)(M)(i)), as applicable to newly constructed or rehabilitated housing. (See 73 FR 71039.)

On July 9, 2010, at 75 FR 39561, HUD published a **Federal Register** notice stating the guidelines HCA's must use in conducting subsidy layering reviews for newly constructed and/or rehabilitated

structures combining other forms of government assistance with project-based voucher assistance. These notices state that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or local agencies performing subsidy layering reviews for project-based voucher housing assistance payment (HAP) contracts for new construction and rehabilitated projects is not self-implementing. This notice restates and updates these prior notices, including specific guidelines related to subsidy layering and low-income housing tax credit (LIHTC).

C. Rental Housing Policy Alignment

Through the work of the Rental Housing Policy Alignment team, an outgrowth of the Interagency Rental Policy Working Group formed in 2011, various workstreams are currently underway to streamline government oversight and align standards across federal agencies providing funding for affordable rental housing.⁵ One of these workstreams is the Subsidy Layering Review group, which seeks to provide a template for agencies within a State to share duties and information related to approval and review of federally-funded affordable housing. A pilot program aiding the signing of Memoranda of Understanding between various State and federal agencies providing affordable housing assistance was

conducted successfully across seven states in 2012,⁶ and HUD intends to publish a guidebook that will allow all agencies that wish to enter into such an agreement to do so. This notice provides guidance and updates on how and in what situations such agreements can be utilized to reduce the burden of subsidy layering review on government agencies.

D. Section 102 of the HUD Reform Act and Other Authorities

HUD's regulations in 24 CFR part 4 implement section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)) and contain a number of provisions designed to ensure greater accountability and integrity in the way in which HUD makes assistance available under certain of its programs. Section 4.13 of 24 CFR (Limitation of assistance subject to section 102(d)) requires HUD to certify, in accordance with section 102(d) of the HUD Reform Act, that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. In addition, The Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), as amended by the Multifamily Housing

¹ It should be noted that, at the time of publication of this Notice, HUD is doing the subsidy layering reviews in all types of cases, including in mixed-finance projects with LIHTC.

² Even though not required by HERA, HUD in practice requires certifications in these cases.

³ See footnote 1.

⁴ See footnote 2.

⁵ See <http://www.whitehouse.gov/blog/2011/02/01/urban-update-aligning-federal-rental-housing-policy>.

⁶ See http://www.huduser.org/portal/pdredge/pdr_edge_featd_article_012612.html.

Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a “Subsidy Layering Review” provision at 42 U.S.C. 3545 note, which states that the subsidy layering requirement for projects receiving assistance under a HUD program and receiving tax credits may be satisfied “by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing.” This statutory note also sets requirements for equity capital and project costs. Finally, as noted, in 2008, HERA altered some of these subsidy layering requirements.

- Project Based Assistance But No LIHTC

Section 2835 of HERA adds subparagraph (M) to section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. 1437(o)(13), which provides that a subsidy layering review shall not be required for project-based assistance (1) for an existing structure, or (2) if a subsidy layering review has been conducted by the applicable State or local agency. However, this section does not speak to the case where HUD conducts the review, hence that situation is governed by other applicable law, specifically, section 102(d) of the HUD Reform Act, 42 U.S.C. 3545(d), which requires that the Secretary certify that assistance within the jurisdiction of the Department (except that Title II mortgage insurance for this purpose is not considered such assistance) to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1) of this section. Assistance under (b)(1) includes “any related assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.”

- HUD Assistance Plus LIHTC

As noted, 42 U.S.C. 3545 note provides that an HCA certification submitted in accordance with HUD guidelines will suffice in lieu of a HUD review when HUD assistance and LIHTC are used in a project. Where there is no current delegation of subsidy layering review authority to an HCA, on

a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD’s review under 42 U.S.C. 3545 note and these guidelines. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA’s subsidy layering review as needed. *Id.*

- Mixed-Finance and Public Housing Without LIHTC

It is also possible for mixed-finance arrangements to occur with other forms of federal assistance, but without LIHTC. In regard to such mixed-finance and public housing, the applicable law is again section 102(d) of the HUD Reform Act, and HUD is responsible for performing subsidy layering reviews.

II. Certification

A. HUD’s Certification Requirements Pursuant to 102(d) of the HUD Reform Act

HUD’s regulation at 24 CFR 4.13 states that before HUD makes any assistance subject to section 102(d), with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies that there are no duplicative government subsidies when combining HUD housing assistance and forms of other federal, State, or local government assistance. Where an HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance, section 2835(a)(1)(F) of HERA eliminates the need for the HUD Reform Act’s section 102(d) certification requirement. However, HUD’s obligation to certify in accordance with 102(d) of the HUD Reform Act and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this notice.

1. HCA Participation Where LIHTC Administered by the HCA Is Involved

An HCA is ordinarily designated for the purpose of allocating and administering the LIHTC program under section 42 of the Internal Revenue Code (IRC), and so may do the subsidy layering review pursuant to authorization under this notice where

there is LIHTC. In those transactions where there are other forms of government assistance involved, as in proposed project-based voucher projects, which do not include LIHTC, and the HCA has no involvement in respect to the assistance, HUD will generally conduct subsidy layering reviews and make the required HUD Reform Act’s section 102(d) certification in accordance with 24 CFR 4.13 for such projects as it is currently doing. HUD will also continue to conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

2. HCA Participation Where Other Assistance Administered by the HCA May Be Involved

Currently, transactions involving LIHTC are the only case where the HCA has substantial involvement and, absent a waiver requested by the locality and granted by HUD for good cause, are generally the only case where the HCA performs the subsidy layering review. However, in the future, Congress may appropriate forms of assistance where there is involvement by a local HCA. In those cases, HUD may, by notice published in the **Federal Register**, on such terms and conditions as HUD may provide, and where not contrary to statutory authority, delegate performance of the subsidy layering review to the local HCA.

B. HCA Certification Under HERA

Under section 8 of the 1937 Act, specifically at 42 U.S.C. 1437f(o)(13)(M), the HUD Reform Act section 102(d) certification is not required with respect to project-based assistance, or if a subsidy layering review has been conducted by the applicable HCA. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed by the applicable HCA, the HCA must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B of this notice).

III. Intent To Participate

An HCA must notify HUD of its intent to participate in the preparation of subsidy layering reviews for projects combining other forms of government assistance with project-based voucher assistance before performing subsidy layering reviews pursuant to this notice.

Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

A. Letter to HUD

An interested HCA shall notify HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by sending a brief letter (Appendix A of this notice), executed by an authorized official of the HCA informing HUD that it: (1) Has reviewed these Guidelines; (2) understands its responsibilities under these Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via email to the Section 8 Financial Management Division at HUD Headquarters at the following address: pih.financial.management.division@hud.gov.

B. HUD Acknowledgement

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate is acknowledged by HUD through a response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, on behalf of proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

C. Revocation of Participation

If HUD determines that an HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may discontinue the HCA's permission to perform subsidy layering reviews on behalf of proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such a determination.

D. HUD Participation

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HUD

Reform Act section 102(d) certification pursuant to such review for projects in cases where: (1) The HCA's authority has been revoked by HUD; (2) an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; (3) project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review; or (4) the project is mixed finance.

E. Applicability

These guidelines apply to any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage that is provided under a program administered by HUD for use in, or in connection with, a specific housing project. Assistance provided under section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is assistance to which section 102(d) of the HUD Reform Act applies for subsidy layering review purposes.

IV. Definitions

Category 1 subsidy layering review—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, with consideration of project-based voucher assistance.

Category 2 subsidy layering review—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, but without consideration of project-based voucher assistance.

Housing Credit Agency (HCA)—For purposes of performing subsidy layering reviews for proposed project-based voucher projects, a housing credit agency includes a State housing finance agency, a participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986. Any agency for which HUD has previously acknowledged its participation and posted the agency's name on the Office of Public and Indian Housing's Web site as a participating agency prior to the effective date of this notice is also considered to be an HCA for purposes of performing subsidy layering reviews, except where HUD has revoked the HCA's authority to perform subsidy layering reviews.

Mixed-finance development—Mixed-finance development refers to the

development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing pursuant to 24 CFR 905.604, where the public housing units are owned in whole or in part by an entity other than a PHA. There are various potential scenarios for the ownership structure of a mixed-finance project, such as: Public housing units may be owned entirely by a private entity; a PHA may co-own with a private entity; or a PHA affiliate or instrumentality may own or co-own the units.

Other government assistance is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

Substantial compliance—For purposes of making the HERA certification, an HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the HCA's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

V. Public Housing Agencies (PHA) Responsibilities

A. When Subsidy Layering Reviews Are Required

When a new construction or rehabilitation project has been selected by a PHA pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance, the PHAs must request a subsidy layering review. As part of the selection process, the PHA must require information regarding all HUD and/or other federal, State, or local governmental assistance to be disclosed by the project owner. Form HUD-2880⁷ (Appendix C of this notice) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA must also inform the owner that if any information changes on the disclosure,

⁷ See <http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf>.

either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

B. Requesting Performance of Subsidy Layering Reviews

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact its local HUD field office. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to its local HUD field office. The local field office will request HUD Headquarters to conduct the subsidy layering review.

C. Providing Documents Required for Review

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D of this notice. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for quick reference by either HUD or the PHA.

D. Subsidy Layering Review Timing and Outcome

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (e.g., environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of project-based voucher assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA's recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

VI. Subsidy Layering Review Categories—Overview

A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review and Considers Project-Based Voucher Assistance

Section 8(o)(13)(M)(i) of the 1937 Act (42 U.S.C. 1437f(o)(13)(M)(i)), as added by section 2835(a)(1)(F) of HERA, provides that a subsidy layering review in accordance with section 102(d) of the HUD Reform Act is not required if a subsidy layering review has been conducted by a qualified HCA (of course, HUD retains the option to conduct the review itself). Section 42(m)(2) of the IRC (26 U.S.C. 42(m)(2)) mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its section 42(m)(2) review, the HCA considers all federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HUD Reform Act section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), codified at 42 U.S.C. 1437f(o)(13)(M)(i), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over-compensation. HCAs must therefore analyze the operating pro-forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage

ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application for, or award of, LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review if such review substantially complies with the subsidy layering review requirements under this notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this notice, the HCA may make the required certification (Appendix B of this notice) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA cannot make the required certification because the operation pro-forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VIII.B of this notice and, if necessary, reduce the subsidy source within its control (i.e., the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the project's viability without overcompensation. HUD will notify the PHA before any action to reduce the project-based voucher units due to issues of overcompensation.

B. Category 2—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review Without Consideration of Project-Based Voucher Assistance

Where a subsidy layering review has been conducted by an HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (e.g., project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the

operational aspects of the project in accordance with Section VIII.B of this notice.

Although project-based voucher projects are exempted from a full subsidy layering review, the HCA must still be able to certify when combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there are any duplicative forms of assistance (i.e., rental assistance from some other state, federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

C. Category 3—Mixed-Finance Public Housing Projects

Under HUD's mixed-finance regulations, subsidy layering review must be conducted by HUD or its designee (e.g., the HCA) pursuant to section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)). HUD is responsible for subsidy layering reviews for mixed-finance and public housing development projects. On a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD's review. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA's subsidy layering review as needed.

VII. Subsidy Layering Review Guidelines—Procedural Description

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review it will follow these Guidelines and use the Subsidy Layering Analysis form (Appendix E of this notice).

A. Maximum Allowable Amounts

Maximum Allowable Amounts are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of project-based voucher assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD, and, where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

B. Safe Harbor Standards

Safe harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional justification and documentation are required.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within Category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; and whether over-head, builder's profit and developer's fee are also within a reasonable range, taking

into account project size, characteristics, locations and risk factors.

VIII. Subsidy Layering Reviews—Guidelines and Requirements

A. Category 1 Subsidy Layering Reviews

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (i.e., maintenance, operational, and replacement reserves) proposed for the project, taking into account project size, project characteristics, project location and project risk factors, as determined by the HCA, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

1. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances, such as market conditions or other circumstances that HUD may determine.

a. Standard (1)

General Condition: safe harbor—six percent (6%) of construction contract amount.

b. Standard (2)

Overhead: safe harbor—two percent (2%) of construction contract amount.

c. Standard (3)

Builder's Profit: safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead, and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than fourteen percent (14%) of the hard construction cost.

d. Standard (4)

Developer's fee: safe harbor—twelve percent (12%) of the total development cost (profit and overhead).

The maximum allowable developer's fee is fifteen percent (15%) of the project costs (profit and overhead).

2. When Development Costs Exceed the Safe Harbor Standard

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

a. HCA Performing Review

In cases where an HCA is performing the review, the HCA must reduce the subsidy source within its control, i.e., the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

b. HUD Performing Review

Where HUD is performing the review and it is determined that, after evaluating allowable sources and uses, the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of project-based voucher assistance.

3. When Development Costs Are Within Safe Harbor

If all safe harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operation's pro-forma before making its LIHTC allocation. If the safe harbor and operational standards (discussed below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

4. Operations Standards

a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro-forma and apply the standards discussed below and contained within the Operations section of Appendix E of this notice. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected DCR over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (i.e., non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending assumptions for their market area.

Generally, operating expenses should be trended at 1 percent to 3 percent per year and rent increases should be trended at 1 percent to 3 percent per year for the first 5 years and 3 percent for each year thereafter. The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VIII.A.4.b of this notice. HUD may adjust these amounts by notice as new data becomes available.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses and amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach. If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for Category 1 projects) or recommend to HUD the appropriate project-based voucher subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total

expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10 percent of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. HUD may adjust this 10 percent standard by notice if new data becomes available.

If the cash-flow is greater than 10 percent of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10 percent of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

B. Category 2 Subsidy Layering Reviews

Category 2 projects shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year operations pro-forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B of this notice). The Operations Standards outlined in section VIII.A.4. of this notice shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate project-based voucher subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

C. Category 3 Subsidy Layering Reviews

Section 35 of the 1937 Act (42 U.S.C. 1437z-7) allows HUD to provide Capital or Operating Funds, or both, to a mixed-finance public housing project. According to the statute, the units assisted with Capital or Operating

Funds shall be developed, operated, and maintained in accordance with the requirements of the 1937 Act. The statute permits such projects to have other sources of funding, including private funding and LIHTC funding under the Internal Revenue Code (26 U.S.C. 42).

Regulations related to mixed-finance development are found at 24 CFR 905.604. Pursuant to 24 CFR 905.606 PHAs must submit a development proposal as well as other specific materials and documentation for HUD approval as a precondition to HUD's release of public housing funds for a project's construction. Under 24 CFR 905.610(b), after the PHA submits the evidentiary materials and other documentation required by HUD shall carry out a subsidy layering analysis pursuant to section 102(d) of the HUD Reform Act "to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account other governmental assistance." The subsidy layering review is currently conducted as a part of HUD's review of a development proposal and evidentiary materials and is not designated by HUD to HCAs.

Contents of Subsidy Layering Analysis for Mixed-Finance Projects

The HUD subsidy layering analysis for mixed-finance projects will include the following review:

a. *Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development; Risk Factors.* HUD will review all mixed-finance projects for compliance with HUD's Cost Control and Safe Harbor Standards (revised April 9, 2003), found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9880.pdf. These standards also contain risk factors for developers with fees above the safe harbor standards.

If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided, as described in the Cost Control and Safe Harbor Standards

b. *Total Development Cost.* HUD will review the total development cost of each mixed-finance development to

ensure that public housing funds are not spent in excess of the Total Development Cost (TDC) and Housing Construction Cost (HCC) limits pursuant to § 941.306. PIH Notice 2011-38 or successor notice contains the current TDC and HCC limits for specific jurisdictions, and can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2011.

An automated TDC worksheet can be found at the following Web site on mixed-finance development: http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/mfph.

c. *Pro Rata Test.* To ensure that the amount of public housing funds committed to a project is proportionate to the number of public housing units contained in the project, HUD will conduct a "Pro Rata Test". To meet this test, the proportion of public housing funds compared to total project funds committed to a project must not exceed the proportion of public housing units compared to the total number of units contained in the project. For example, if there are a total of 120 units in the project and 50 are public housing units, the public housing units are 42 percent of the total number of units in the project. Therefore the amount of public housing funds committed to the project cannot exceed 42 percent of the total project budget, unless otherwise approved by HUD. However, if public housing funds are to be used to pay for more than the pro rata cost of common area improvements, HUD will evaluate the proposal to ensure that common area improvements will benefit the residents of the development in a mixed-income project.

d. *Net Low-Income Tax Credit Equity.* Projects using LIHTC as part of their financing are reviewed to ensure that the sale of these credits results in an amount of net tax credit equity being invested in the project that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that is not less than 51 cents for each dollar of tax credit allocation awarded to a project. HUD also reviews this net amount to ensure that it represents a market rate of equity, given the current market for the purchase of tax credits. To calculate the discounted net proceeds, HUD reviews the gross syndication proceeds and other expenses relevant to completing the tax credit syndication, compounding the equity installments received prior to the project's Place-in-Service Date and discounting the installments received after this date. If the project receives 51

cents or less or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

For mixed-finance projects that comply with the mixed-finance requirements of this notice, no further subsidy layering analysis will be required. For those projects that fail to comply, PHAs must (i) restructure the project so it complies with the requirements and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the mixed-finance requirements of this notice.

IX. Monitoring

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.
- Whether the values were correctly determined to be inside or outside of the approvable range.
- If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.
- If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: September 22, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A

HCA's Notice of Intent to Participate

[_____, 20__]

U.S. Department of Housing and Urban Development
451 7th Street, SW
Room 4232
Washington, DC 20410

By: Email:

pih.financial.management.division@hud.gov

Re: HCA's Intent To Participate— Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban

Development that it intends to conduct Subsidy Layering Reviews pursuant to HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other federal, State, or local assistance does not result in excessive compensation. By signifying our intent to participate, the _____ (name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development, and 24 CFR Section 983.55.

The agency understands its responsibilities under the above cited statutes and the Guidelines. The agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent to Participate, the undersign acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or _____ (name of agency) informs the HUD, in writing, upon 30 days' notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the _____ (name of agency) certifies that, upon HUD approval, the _____ (name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:

[UNDERSIGNED NAME AND Title]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]

Attention of: [NAME], [TITLE]

By Phone—[XXX-XXX-XXXX]

By Fax—[XXX-XXX-XXXX]

By Email—[email address]

[NAME OF Agency]

By:

Name:

Title:

The completed, signed, and dated Notice of Intent to Participate should be

sent as a PDF attachment to an email message addressed to Miguel Fontanez at *pih.financial.management.division@hud.gov*. The email message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the email please call (202) 708-2934.

Appendix B

HCA Certification

For purposes of the provision of Section 8 Project-Based Voucher Assistance authorized pursuant to 42 U.S.C. section 8(o)(13), section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 Project-Based Voucher Assistance provided by the United States Department of Housing and Urban Development to _____, located in _____ is not more than is necessary to provide affordable housing after taking into account other government assistance.

Name of HCA _____

Printed Name of Authorized HCA Certifying Official _____

Signature of Authorized HCA Certifying Official _____

Date _____

Appendix C

HUD Form 2880

<http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf>

Appendix D

DOCUMENTS TO BE SUBMITTED BY THE PHA TO THE APPLICABLE HCA OR HUD HEADQUARTERS FOR SUBSIDY LAYERING REVIEWS

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, etc. Sources should generally include only permanent financing. If

interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as "soft costs." Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder's profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to

the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement. However, proposal letters and letters of intent are not sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the "as is" value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an "as is" valuation.

6. Stabilized Operating Pro Forma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions, and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at _____ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the

amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement.

12. Identity of Interest Statement.

13. PHA commitment letter for project-based voucher assistance.

14. Proposed project-based voucher gross rent amounts.

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Appendix E

Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY			Appendix E	
Project Name, Sponsor and Phase Information				
Number of units				
SUMMARY: Subsidy Layering Guideline Standards (Note A)				
	This Project	"Safe Harbor" Standard	"Ceiling" Standard	
1. Builder Profit/General Condition/Over-head		6%,2%,6%	14% Gen Cond + OH&P	
2. Developer Fee		12.0%	15.0%	
3. Net Equity Proceeds		\$0.80	Market rate	
4. Debt Coverage Ratio		1.10	1.45	
Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)				
(a) Gross LIHTC Equity Syndication Proceeds from Investor				
(b) Equity Proceeds Not Available for Project Uses				
(i) Bridge Financing Costs (on loans to be repaid by equity) (Note A)				
(A) Bridge loan interest				
(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)				
(ii) Other Syndication Fees and Expenses (Note B)				
(A) Ownership entity organizational and legal cost				
(B) Syndication fees paid from gross syndication proceeds				
(C) Tax credit fees (to LIHTC-awarding agency, etc.)				
(D) Other syndication fees and costs (accounting, cost certification, etc.)				
(E) Total deductions from equity syndication proceeds				-
(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project				
(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))				
(ii) Enter amount of annual tax credit allocation (from tax credit award letter):				
(iii) Multiply by 10 (LIHTC award amount is annual allocation per year for 10 years)				
(iv) Equals total LIHTC allocation to project over 10 years:				
(v) Multiplied by investor's ownership percentage:				
(vi) Equals LIHTC allocation to the investor:				
(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =				
Calculation of Debt Coverage Ratio (guideline standard 4)				
(a) Net Operating Income				
(i) Total Operating Income				
(ii) minus Total Operating Expenses				
(iii) Equals NOI				
(b) Debt Coverage Ratio				
(i) Debt Service				
(ii) Net Operating Income (4.(a)(iii) above) divided by Debt Service equals DCR:				
(c) Cash Flow				
(i) Annual Reserve contributions				
(ii) Cash Flow (4.a.iii minus 4.b.i minus 4.c.i)				
(iii) Cash Flow as a percentage of Expenses (4.c.ii divided by 4.a.ii)				
Notes:				
A. Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).				
B. Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include only those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.				

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Appendix F

SOURCES AND USES STATEMENT

(Sample Format)

SOURCES:

Debt Sources:

- Mortgage—
- Loans—
- Other Loans (specify)—
- Other (Specify)—

Equity Sources:

- Grants available for project uses—
- Estimated Net Syndication Proceeds—
- Additional Owner Equity Necessary ⁸—
- Other Equity Sources (specify)
- Total Sources: \$ _____

PROJECT USES:

- Mortgage Replacement Cost Uses—
- Total Land Improvements—
- Total Structures—
- General Requirements—
- Builder's General Overhead—
- Builder's Profit ⁹—
- Architects' Fees—
- Bond Premium—
- Other Fees—
- Construction interest—
- Taxes—
- Examination Fee—
- Inspection Fee—
- Financing Fee—
- FNMA/GNMA Fee—
- Title & Recording—
- Legal—
- Organization—
- Cost Certification Fee—
- Contingency Reserve (Sub Rehab)—
- BSPRA/SPRA (if applicable)—
- Acquisition Costs—

SUBTOTAL MORTGAGEABLE REPLACEMENT COST USES\$

Non-Mortgage Uses:
(i.e. Uses Payable by Sources Other than the Mortgage)¹⁰

- Working Capital Reserve or ¹¹—
- Operating Deficit Reserve ¹²—

SUBTOTAL NON-MORTGAGEABLE USES—\$

TOTAL PROJECT USES\$

Estimated Net Syndication Proceeds:

The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.

- Total Tax Credit Allocation—\$
- Estimated Gross Syndication Proceeds—\$

Syndication Expenses:

- Accountant's Fee—\$
- Syndicator's Fee—\$
- Attorney's Fee ¹³—\$
- HCA Fee—\$
- Organizational Expense ¹⁴—\$
- Other (Specify)—\$
- Subtotal Syndication Expenses—\$¹⁵
- Bridge Loan Costs less Interest (if applicable)—\$

Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)—\$

- Total Reductions from Gross—\$
- Estimated Net Syndication Proceeds—\$

[FR Doc. 2014-22971 Filed 9-25-14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-HQ-IA-2014-N201;
FXIA1671090000-145-FF09A30000]

Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with marine mammals. We issue these permits under Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358-2281; or email DMAFR@fws.gov.

FOR FURTHER INFORMATION CONTACT:

Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); DMAFR@fws.gov (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Marine Mammals

Permit No.	Applicant	Receipt of application Federal Register notice	Permit issuance date
05664B	Bristol Bay Native Association	78 FR 50083; August 16, 2013	September 10, 2014.
166346	Matson's Laboratory	79 FR 35375; June 20, 2014	September 5, 2014.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and

⁸This line may be used for the additional amount needed from the owner to balance sources against uses when no additional monies are available from other sources.

⁹Builder's Profit for non-Identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgage Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of

¹⁰Note that syndication expenses are included below in the estimation of *Net* tax credit proceeds for this Statement, and therefore, are not included within this Statement.

¹¹Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

¹²Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

¹³Such fees may not duplicate legal nor title work charges already recognized. Therefore, only fees

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associated with the additional legal service associated with LIHTC projects should be recognized here by the HCA.

¹⁴Such expenses may not include Organizational expenses which are already included, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

¹⁵See Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.