

501, TP-501, TP-502, and EPA Regulation 40 CFR 59.623.

Because the scope of the consumer product safety rule is established by the CGBPA, this rule does not incorporate by reference the scope section of ASTM F2517-15 or Appendix X1 that relates to the scope section of ASTM F2517-15.

#### V. Effective Date

As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment by April 3, 2015, the rule will become effective on April 12, 2015.

#### VI. Other Relevant Statutory Provisions

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. This rule merely codifies requirements that will take effect through operation of law as specified in the CGBPA. The rule does not impose any requirements beyond those put in place by the CGBPA. Thus, the rule does not create new substantive obligations for any entity, including any small entity. Accordingly, the Commission certifies that the rule will not have a significant impact on a substantial number of small entities.

##### B. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

##### C. Paperwork Reduction Act

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) is not required.

#### VII. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C.

2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances).

As discussed above, under the CGBPA, the child-resistance requirements of ASTM F2517-15 became a consumer product standard for CPSA purposes. Children's Gasoline Burn Prevention Act, Pub. L. 110-278, Sec. 2(a) (July 17, 2008). The child-resistance requirements of ASTM F2517-15, which will be codified under this rule, will invoke the preemptive effect of section 26(a) of the CPSA.

#### VIII. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. Because ASTM F2517-15 is deemed a "consumer product safety rule" for CPSA purpose, portable gasoline containers manufactured on or after April 12, 2015 are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517-15.

##### List of Subjects in 16 CFR Part 1460

Consumer protection, Gasoline, Incorporation by reference, Safety.

For the reasons stated above, the Commission adds part 1460 to subchapter B of title 16 of the Code of Federal Regulations to read as follows:

#### PART 1460—CHILDREN'S GASOLINE BURN PREVENTION ACT REGULATION

Sec.

1460.1 Scope and application.

1460.2 Definition.

1460.3 Requirements for child-resistance for closures on portable gasoline containers.

**Authority:** Sec. 2, Pub. L. 110-278, 122 Stat. 2602.

##### § 1460.1 Scope and application.

In accordance with the Children's Gasoline Burn Prevention Act, portable

gasoline containers must comply with the requirements specified in § 1460.3, which are considered to be a consumer product safety rule.

##### § 1460.2 Definition.

*Portable gasoline container* means any portable gasoline container intended for use by consumers.

##### § 1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Each portable gasoline container manufactured on or after April 12, 2015 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 6 of ASTM F2517-15 (including Appendixes X2 and X3 referenced therein), *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, approved on January 1, 2015. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, telephone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**Alberta E. Mills,**

*Acting Secretary, U.S. Consumer Product Safety Commission.*

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#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### 24 CFR Chapters VIII and IX

[Docket No. FR-5779-N-01]

#### HUD Approval of Requests for Transfers of Multifamily Housing Project-Based Rental Assistance, HUD-Held or Insured Debt, and Income-Based Use Restrictions

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of requirements to transfer assistance.

**SUMMARY:** This notice establishes the terms and conditions by which HUD will approve a request for the transfer of project-based rental assistance, debt held or insured by the Secretary, and statutorily required income-based use restrictions from one multifamily housing project to another (or between several such projects). The Department of Housing and Urban Development Appropriations Act, 2014 and the Department of Housing and Urban Development Appropriations Act, 2015 give the Secretary the authority to approve transfer requests for fiscal years 2014 through 2016, provided that the Secretary publish a notice in the **Federal Register** establishing the terms and conditions for HUD approval of such transfers no later than 30 days before such notice takes effect. HUD believes that publication of the criteria will assist project owners to determine whether a transfer is feasible given the specific circumstances of their multifamily projects. Publication of the criteria will also facilitate HUD's review of transfer requests by helping owners formulate their requests in a manner that adequately addresses the statutory criteria.

**DATES:** *Effective:* April 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** Nancie-Ann Bodell, Acting Director, Office of Asset Management and Portfolio Oversight of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6110, Washington, DC 20410; telephone number 202-708-2495 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Beginning with section 318 of the Department of Housing and Urban Development Appropriations Act, 2006 (Pub. L. 109-115, 119 Stat. 2396, approved November 30, 2005), HUD appropriations acts have contained a general provision authorizing the Secretary to approve requests from project owners for the transfer of certain rental assistance, debt, and income-based use restrictions between HUD-assisted projects. For fiscal years 2014 and 2015, this transfer authority is provided under section 214 of Title II of Division L of the Consolidated Appropriations Act, 2014 (Pub. L. 113-

76, 128 Stat. 5, approved January 17, 2014) (Section 214).<sup>1</sup> Section 214(a) states that "[n]otwithstanding any other provision of law . . . the Secretary of Housing and Urban Development may authorize the transfer of some or all project-based assistance, debt held or insured by the Secretary and statutorily required low-income and very low-income use restrictions if any, associated with one or more multifamily housing project or projects to another multifamily housing project or projects." Section 214(b) also allows for phased transfers of project-based assistance to accommodate the financing and other requirements related to rehabilitating or constructing the project or projects to which the assistance is transferred.

HUD approval of transfers is subject to the conditions enumerated in the appropriations act for the applicable fiscal year. These statutory terms and conditions have, in general, been consistent from one appropriations act to the next. The statutory criteria for fiscal years 2014 through 2016 are enumerated in Section 214(c), which provides as follows:

- The transfer authorized in subsection (a) is subject to the following conditions:

- NUMBER AND BEDROOM SIZE OF UNITS.—

- For occupied units in the transferring project: The number of low-income and very low-income units and the configuration (*i.e.* bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects and the net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects.

- For unoccupied units in the transferring project: The Secretary may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet current market demands, as determined by the Secretary and provided there is no increase in the project-based assistance budget authority.

- The transferring project shall, as determined by the Secretary, be either physically obsolete or economically nonviable.

<sup>1</sup> Section 212 of Title II of Division K of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235, approved December 16, 2014) provides the same authority for fiscal years 2015 and 2016. For the sake of simplicity, this notice uses "Section 214" to refer to the authority in both Acts, as the language other than the dates is identical.

- The receiving project or projects shall meet or exceed applicable physical standards established by the Secretary.

- The owner or mortgagor of the transferring project shall notify and consult with the tenants residing in the transferring project and provide a certification of approval by all appropriate local governmental officials.

- The tenants of the transferring project who remain eligible for assistance to be provided by the receiving project or projects shall not be required to vacate their units in the transferring project or projects until new units in the receiving project are available for occupancy.

- The Secretary determines that this transfer is in the best interest of the tenants.

- If either the transferring project or the receiving project or projects meets the condition specified in subsection (d)(2)(A),<sup>2</sup> any lien on the receiving project resulting from additional financing obtained by the owner shall be subordinate to any FHA-insured mortgage lien transferred to, or placed on, such project by the Secretary, except that the Secretary may waive this requirement upon determination that such a waiver is necessary to facilitate the financing of acquisition, construction, and/or rehabilitation of the receiving project or projects.

- If the transferring project meets the requirements of subsection (d)(2),<sup>3</sup> the owner or mortgagor of the receiving project or projects shall execute and record either a continuation of the existing use agreement or a new use agreement for the project where, in either case, any use restrictions in such agreement are of no lesser duration than the existing use restrictions.

- The transfer does not increase the cost (as defined in section 502 of the Congressional Budget Act of 1974, as amended) of any FHA-insured mortgage, except to the extent that appropriations are provided in advance for the amount of any such increased cost.

HUD has exercised the transfer authority on a case-by-case basis, determining compliance with the statutory criteria based on the specific circumstances of the projects. Most of the statutory criteria are prescriptive, leaving little room for the exercise of agency discretion (for example, the requirement that the transfer not increase the cost of any FHA-insured mortgage). Others, however, are more

<sup>2</sup> Subsection (d)(2)(A) pertains to housing that is subject to a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*).

<sup>3</sup> Subsection (d)(2) defines the term "multifamily housing project."

generally phrased, allowing for HUD interpretation in applying the criteria (for example, the requirement that the transferring project be either physically obsolete or economically nonviable, “as determined by the Secretary”). Over time, HUD has developed uniform guidelines to facilitate the review of transfer requests and aid in determining compliance with the statutory criteria.

Section 214(e)(1) requires that HUD publish by notice in the **Federal Register** the terms and conditions for HUD approval of transfers, no later than 30 days before such notice takes effect. This notice is being issued in accordance with the publication requirements of Section 214(e)(1). HUD believes that publication of the criteria will assist project owners in determining whether a transfer is appropriate given the specific circumstances of their multifamily projects. Publication of the criteria will also facilitate HUD’s review of transfer requests by helping owners formulate their requests in a manner that adequately address the statutory criteria.

Owners of multifamily housing projects, as defined by subsection (d)(2) of Section 214, who wish to request a transfer of rental assistance, debt, or income-based use restrictions under Section 214 should submit a package containing the relevant materials outlined below to the HUD Hub/Program Center or Regional Center/Satellite Office for review. Owners can submit packages for review on or after the effective date of this notice. HUD will issue a subsequent Housing notice detailing procedural submission requirements and will follow this notice with a proposed rule to solicit comment before regulatory codification of these criteria.

## B. Statutory Terms and Conditions for HUD Approval of Transfer Requests

Commencing for transfer requests submitted pursuant to Section 214, HUD will evaluate the request, on a case-by-case basis, in accordance with the following criteria. The receiving property must be a multifamily housing project prior to or as a result of the Section 214 transfer. The receiving project may already be HUD-affiliated, meaning it has existing HUD project-based rental assistance, an existing use restriction, or debt (either HUD-held or FHA-insured). HUD will approve a transfer under Section 214 to a HUD-affiliated property if the receiving property is in compliance with all business agreements with the Department or has a HUD-approved plan in place to correct any identified deficiencies. The receiving property

may be existing, under construction, newly constructed, undergoing substantial rehabilitation, or undergoing moderate rehabilitation. Before Section 8 project-based rental assistance is transferred to the receiving property, the property must exist and be habitable (as demonstrated by a certificate of occupancy or like documentation). The numbered items below track the statutory criteria and, where HUD has been granted flexibility, establishes requirements and guidance on how HUD will assess compliance with the statutory factors.

### 1. Number and Bedroom Size of Units

For occupied units in the transferring project: The number of low-income and very low-income units and the configuration (*i.e.* bedroom size) provided by the transferring project shall be no less than when transferred to the receiving project or projects. The receiving owner<sup>4</sup> must provide detailed information about the number of units and the corresponding unit size occupied by low-income and very-low income families respectively, as well as the proposed number of units for low and very-low income families and the corresponding unit configuration at the receiving project. In determining compliance with this requirement, HUD will consider the number of units occupied by low and very low-income families and their respective unit sizes, as well as whether the size of the occupied units is appropriate for the family size occupying those units. The net dollar amount of Federal assistance provided to the transferring project shall remain the same in the receiving project or projects. HUD Multifamily Hub/Program Center or Regional Center/Satellite Office staff will verify that the net dollar amount of Federal assistance transferred remains the same in the receiving project or projects.

For unoccupied units in the transferring project: HUD may authorize a reduction in the number of dwelling units in the receiving project or projects to allow for a reconfiguration of bedroom sizes to meet market demands, as demonstrated by the transferring owner, provided there is no increase in the project-based assistance budget authority. HUD Multifamily Hub/Program Center or Regional Center/Satellite Office staff will verify that the net dollar amount of Federal assistance transferred remains the same in the receiving project or projects. The transferring owner shall provide justification for a reduction in the

number of dwelling units in one or more of the following ways:

a. Evidence of all efforts to market the unit type proposed for reduction and evidence of the demand within the geographic market area for the proposed new unit type. The documentation may include evidence of the transferring owner’s efforts, including:

- i. Property traffic reports.
- ii. Advertising details.
- iii. Age and/or income waivers requested.
- iv. Local housing authority wait list information or other affordable housing provider contacts made demonstrating that there is minimal or no demand for the unit type.

b. Documentation that the average vacancy at the transferring property has been 25 percent or more over the past 24 months.

c. Any other documentation that a reduction in the number of dwelling units is necessary to meet market demand, and approved by HUD.

### 2. Physical Obsolescence or Economic Nonviability

Physical obsolescence shall be shown in one or more of the following ways:

- a. A Real Estate Assessment Center (REAC) physical inspection score of 30 or below.
- b. Two or more consecutive REAC physical inspection scores of below 60.
- c. Condemnation or other such notice by the local or state government rendering the property uninhabitable.
- d. A taking through eminent domain.
- e. Evidence that needed capital repairs cannot be made without the property losing financial viability.
- f. Any other proof of physical obsolescence provided by the owner and approved by HUD.

Economic non-viability must be shown in one or more of the following ways:

- a. A market analysis justifying the inability of the property to meet current HUD-imposed affordability restrictions.
- b. A market analysis indicating limited to no market for the unit type(s).
- c. A demonstrated average vacancy of 25 percent or more over the past 24 months.
- d. Any other proof of economic non-viability provided by the owner and approved by HUD.

The transferring owner is required to certify in writing that the material submitted to demonstrate compliance with this criterion is true and accurate. The Multifamily Hub/Program Center will review all submitted information and verify its accuracy.

<sup>4</sup> The term “owner” refers to either the transferring or receiving owner unless specified.

### 3. *Applicable Physical Standards*

The receiving project or projects must have a REAC physical inspection score of 60 or above. If the project does not have a current REAC physical inspection score, an inspection must be conducted prior to the transfer and the project must score 60 or above or have a HUD-approved plan in place to correct any deficiencies.

The receiving project must also meet all applicable accessibility requirements, including, but not limited to the accessibility requirements of the Fair Housing Act, section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. The owner must provide documentation acceptable to HUD that the receiving project is in compliance with all applicable accessibility requirements. The HUD Hub/Program Center or Regional Center/Satellite Office will review the submitted documentation and verify acceptability.

### 4. *Notification and Consultation With Tenants and Local Governmental Officials*

The transferring owner must give the tenants and legitimate tenant organization(s) written notification of the proposed transfer and provide a minimum 30-day comment period. HUD will not accept a Section 214 request for any project unless the transferring owner has notified the tenants of the proposed transfer and has provided the tenants with an opportunity to comment on the proposed transfer.

a. The notification should include the address and phone of the appropriate HUD office, including the specific division and/or name and phone number of a contact at the appropriate HUD office. The notification should be provided in appropriate formats as necessary to meet the needs of all, including persons with limited English proficiency and formats for persons with vision, hearing, and other communication-related disabilities (*e.g.*, Braille, audio, and large type, sign language interpreters, assistive listening devices, etc.).

b. The notification will include a description of the impact of the request on tenants' rental assistance and tenant contributions. The notification must also explain the tenants' relocation rights and responsibilities, including the assistance that tenants may become eligible to receive under the Uniform Relocation Act if acquisition, rehabilitation or demolition are involved (see section five below). In addition, the notification must inform the tenants that if a Section 8 project-

based rental assistance contract will be transferred, and it assists the unit they inhabit, they may be eligible for tenant protection vouchers if they choose not to relocate (see Section C below).

c. The notice must be delivered directly to each unit in the project or mailed to each tenant and posted in at least 3 places/common areas throughout the project, including any project office. In a project greater than 4 stories, the notice may be served either by delivery to each unit or by posting. If the posting method is used, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located.

i. The tenants (including any legal or other representatives acting for the tenants individually or as a group) have the right to inspect and copy the materials that the owner is required to submit to HUD for a period of 30 days from the date on which the notice is served to the tenants. Any tenant comments must be available in the project office during normal business hours for public reading and copying.

ii. The tenants have the right, during this period, to submit written comments on the transfer to the transferring owner and the appropriate HUD office. Tenant representatives may assist tenants in preparing these comments.

d. The transferring owner must hold a meeting with the tenants and legitimate tenant organizations to discuss the details of the notification and answer questions.

e. Upon completion of the tenant comment period, the transferring owner must review the comments submitted by the tenants and their representatives and prepare a written evaluation of the comments. Any negative comments must be addressed. The transferring owner must then submit the following materials to the appropriate HUD office at the time of submission of the request for transfer under Section 214:

- i. A copy of the transferring owner's Notification to the tenants;
- ii. A sign-in sheet from the tenant meeting;
- iii. A copy of all the tenant comments;
- iv. The transferring owner's evaluation of the tenant comments and any responses the owner gave to negative comments; and
- v. A certification by the transferring owner that it has complied with all of the requirements of 24 CFR 245.410, 245.415, 245.416 through 245.419, as applicable, and 245.420. The transferring owner must identify any Fair Housing litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the owner and

HUD. The Office of Fair Housing and Equal Opportunity (FHEO) will ensure there is no conflict between the agreements and the proposed transfer. If there is a conflict, the transferring owner may propose modifications to the remedial agreement as part of the transfer proposal.

The owner must also provide a certification of approval from the relevant local government officials, which may include but are not limited to the:

- a. Local Mayor.
- b. City Council.
- c. Planning Commission.
- d. Health and Human Services Commission.
- e. Any other pertinent local government official or government body.

Although in some cases, a certification of approval may be required from multiple local governmental officials, there must be at least one certification of approval from at least one local government official in all cases to warrant approval of a request for transfer of assistance, debt, or use restrictions.

### 5. *Relocation of Tenants*

The tenants of the transferring project who remain eligible to receive assistance will not be required to vacate their units in the transferring project until new units in the receiving project are available for occupancy. If tenants must move as a direct result of acquisition, rehabilitation or demolition in connection with a transfer of assistance under Section 214, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) may apply.

HUD will review tenant relocations and protections on a case-by case-basis to ensure tenants are protected from permanent displacement. Under no circumstances shall the residents pay for any relocation costs incurred as a result of the transfer and the resulting move to the receiving property. It is within the owner's discretion whether to pay relocation costs for relocations to locations other than the receiving property. A Section 214 transaction where the tenants' relocation expenses are not paid, will not be approved by HUD.

### 6. *Best Interest of the Tenants*

HUD will determine that the transfer is in the best interest of the tenants based on criteria including, but not limited to, the following:

- a. The transfer will preserve affordable and/or assisted housing in a

market area in need of such assistance/affordability.

b. The transfer complies with section C of this notice. The site and neighborhood requirements ensure that the receiving property is in a location that affords the tenants at the transferring property the same or a better property location than the transferring site.

c. All current tenants will receive the same level of assistance they are currently receiving. Tenants that move from the transferring project to the receiving project remain subject to their existing lease requirements and all occupancy rules. The receiving owner may not seek to terminate the lease of a tenant from the transferring project for actions that occurred prior to the Section 214 transfer but the tenant will be subject to ongoing eligibility requirements for actions that occur after the transfer. Any eviction procedures currently underway at the transferring project will not be affected by the transfer of budget authority.

d. In scenarios where a Section 8 HAP contract will be transferred, and a tenant assisted by the HAP contract objects to relocating to the receiving property, the tenant may be eligible to receive a tenant protection voucher, subject to the availability of appropriations. A tenant may receive a TPV, if they meet the eligibility requirements for voucher assistance and the unit that they currently reside in is supported by a Section 8 project-based rental assistance contract that is subject to transfer as part of the Section 214 transfer. The owner will notify the tenant of their potential eligibility to receive a TPV at the time of tenant notification and subsequently notify the Multifamily Hub/PC regarding how many TPVs are requested. If TPVs are needed, the Multifamily Hub/PC should work with the Public and Indian Housing (PIH) field office to follow the procedures outlined in PIH Notice 2001–41.

e. To determine if the Section 214 transfer is in the best interest of the tenants, the transferring owner must provide documentation that all tenants residing at the property at the time of the transfer are relocating to a property of greater economic solvency or better physical condition, or accepting a tenant protection voucher to move to a property that best meets their housing needs.

f. If the transferring property is not fully assisted by a Section 8 project-based rental assistance contract, HUD will approve or disapprove the transfer based upon its review of the information submitted and all tenant comments received.

g. If the transferring property is not fully assisted by a Section 8 project-based rental assistance contract, the transfer will only be approved if:

- i. There are no tenants at the transferring property; or
- ii. The property is occupied but the transfer will be to an immediately adjacent property; or
- iii. The unassisted tenants would have to move in the absence of the Section 214 transfer (e.g., the site is contaminated, the property is or will be condemned, the property is being taken via eminent domain, etc.); or
- iv. The transfer involves a 202 Direct Loan or a 202/811 Capital Advance or PRAC contract that must be transferred as a result of a state's response to the Olmstead Decision or state Medicaid/Medicare policies on congregate housing make it economically impossible to continue operating the property as originally conceived.

h. If the tenants must be relocated, they will/did receive the protections provided under the URA, or other assistance if the URA is not triggered. No tenants will be displaced as a result of the transfer.

#### *7. Subordination of Liens*

To demonstrate compliance, the receiving owner must submit one or more of the following as documentation:

- a. Verification from the FHA lender that any lien on the receiving project is subordinate to any FHA-insured mortgage lien.
- b. Other documentation as applicable. A receiving owner may submit a waiver request if the receiving owner believes it is necessary that a lien(s) not be subordinate to the FHA insured mortgage to facilitate the financing of acquisition, construction, or rehabilitation of the receiving project or projects. Such a request must demonstrate that the waiver is necessary to finance the transaction and that there is minimal risk to the FHA as a result of the waiver. HUD must approve all waiver requests.

#### *8. Use Restrictions*

If a use restriction is in place at the receiving project, the receiving owner must sign a new or amended use restriction that includes all income and eligibility restrictions of the transferring use restriction and runs for the duration of the transferring project's existing use restriction or the use restriction at the receiving project, whichever is longer.

#### *9. No Increased FHA-Insured Mortgage Costs*

Transfers must not increase the cost (as defined in section 502 of the

Congressional Budget Act of 1874) of any FHA-insured mortgage. HUD will consider the transfer of an FHA-insured mortgage, or Secretary-held formerly insured mortgage that is subsidized under either Section 221(d)(3)–(d)(5) with below market interest rates or Section 236. In addition, in order to avoid a claim against the General Insurance Fund, HUD may approve the transfer of a non-subsidized FHA-insured mortgage in combination with the transfer of a project-based rental assistance contract and/or a use restriction to a receiving project. However, HUD will only consider the transfer of a non-subsidized FHA-insured mortgage when the transferring project is in danger of imminent default on its FHA-insured mortgage due to a finding that the project is physically obsolete and/or economically nonviable in compliance with the criteria and process set forth in this notice.

#### **C. Site and Neighborhood Standards for the Receiving Property**

1. Transfers that involve Section 202 assistance must comply with the site and neighborhood requirements at 24 CFR 891.125.

2. Transfers that involve Section 811 assistance must comply with the site and neighborhood requirements at 24 CFR 891.125 and 24 CFR 891.320.

3. All other receiving sites must comply with the site and neighborhood requirements below. The receiving owner must submit the address of the proposed property with their proposal and HUD will determine whether the site meets the following requirements:

a. The site and neighborhood is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

b. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

c. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

d. If the receiving project is new construction, and is not covered by the

existing regulations cited above for Section 202/811 properties, it may not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area and may not be located in an area of minority concentration. If HUD determines that the receiving project will be located in an area of minority concentration, the receiving Owner must submit supporting data (*e.g.* census data, evidence of local revitalization efforts, etc.) in order for HUD to determine that they meet one of the exceptions below:

i. Sufficient, comparable opportunities exist for housing for minority households in the income range to be served by the proposed project, outside areas of minority concentration. Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority households and in relation to the racial mix of the locality's population.

(A) Units may be considered to be comparable opportunities if they have the same household type and tenure

type (owner/renter), require approximately the same total tenant payment, serve the same income group, are located in the same housing market, and are in standard condition.

(B) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority households, in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(1) A significant number of assisted housing units are available outside areas of minority concentration.

(2) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(3) There are racially integrated neighborhoods in the locality.

(4) Programs are operated by the locality to assist minority households, as applicable, that wish to find housing outside areas of minority concentration.

(5) Minority households have benefitted from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

(6) A significant proportion of minority households, have been successful in finding units in

nonminority areas under the Section 8 Certificate and Housing Voucher programs.

(7) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

ii. The project is necessary to meet overriding housing needs that cannot be met in that housing market area. Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

4. All Section 214 transactions (including those involving Section 202/811 properties) will be reviewed by HUD's Office of Policy Development and Research to assess whether there is sufficient demand for affordable rental housing in the receiving market area and to ensure that the transfer does not occur in neighborhoods with highly concentrated poverty.

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
New Metro Neighborhood .....	<p>For Inter-FMR Area transfers, there can be two types: (1) Transferring to a new metropolitan (metro) area; or (2) transferring to a new non-metro county.</p> <p>For moves into a metro area, the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ol style="list-style-type: none"> <li>The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or</li> <li>The receiving property is in a SAFMR area with a poverty rate between 30 and 40 percent; and either: <ol style="list-style-type: none"> <li>Housing market activity within the SAFMR</li> </ol> </li> </ol>	<p>For Intra-FMR transfers, there can be three types: (1) Within a metro area to a new neighborhood (Small Area Fair Market Rent (SAFMR)/Zip); (2) within a metro area, in the same neighborhood (SAFMR/Zip code); and (3) within a non-metro county.</p> <p>Within a metro area to a new neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <ol style="list-style-type: none"> <li>The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will include and result in new construction and substantial rehabilitation of mixed income housing; or</li> <li>The receiving property is in a SAFMR area with a poverty rate between 30 and 40 percent; and either</li> </ol>

	Inter-Fair Market Rent (FMR) area transfers	Intra-Fair Market Rent (FMR) area transfers
	<p>area would indicate that the area is revitalizing; or</p> <p>2. The poverty rate has seen significant recent decline.</p>	<p>1. The proposed receiving site has a higher SAFMR than the current site; or</p> <p>2. The proposed receiving site is considered immediately adjacent (within 1/2 mile) to the current site; or</p> <p>3. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or</p> <p>4. The poverty rate has seen significant recent decline.</p>
Old Metro Neighborhood .....	N/A: By definition a transfer to a new FMR area will be a transfer to a new neighborhood.	<p>Within a metro area, and in the same neighborhood (SAFMR/Zip code), the receiving property's neighborhood must be in a SAFMR area with a poverty rate of less than 30 percent, unless:</p> <p>a. The receiving property is in a neighborhood receiving a Choice Neighborhoods Grant or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing; or</p> <p>b. The SAFMR area is between 30 and 40 percent and at least 50 percent of the units at the receiving property are unassisted and either:</p> <p>1. The proposed receiving site is considered immediately adjacent (within 1/2 mile) to the current site; or</p> <p>2. Housing market activity within the SAFMR area would indicate that the area is revitalizing; or</p> <p>3. The poverty rate has seen significant recent decline.</p>
Non-Metro .....	<p>For moves to a non-metro county, the receiving property must be in a county that has a poverty rate less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent, and:</p> <p>1. The housing market activity within the county would indicate that the area is revitalizing; or</p> <p>2. The poverty rate has seen significant recent decline; or</p> <p>3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing.</p>	<p>Within the same non-metro county, the receiving property must be in a county that has a poverty rate of less than 30 percent, unless:</p> <p>The county poverty rate is between 30 and 40 percent and:</p> <p>1. The housing market activity within the county would indicate that the area is revitalizing; or</p> <p>2. The poverty rate has seen significant recent decline; or</p> <p>3. The transaction is part of a statewide portfolio preservation strategy operated by a Housing Finance Agency or is part of a significant state or local revitalization initiative that will result in new construction and substantial rehabilitation of mixed income housing.</p>

#### D. Additional Requirements of the Receiving Owner Prior to Approval

The submission to HUD requesting a transfer under Section 214 must include the following information from the receiving owner:

1. Written confirmation of acceptance of the Housing Assistance Payments (HAP) contract, Use Agreement, and/or debt, as applicable, and confirmation that the transfer is warranted by local demand for affordable housing.

2. If the transfer involves project-based section 8 assistance, written evidence that the transfer of the HAP contract is warranted by local demands for affordable housing. Supporting documentation may include a market analysis showing eligible families in the area, a list of current tenants who are

eligible for Section 8 assistance, or prospective tenants on waiting lists.

3. If applicable, a written tenant selection plan, Tenant Relocation Plan and an Affirmative Fair Housing Marketing Plan approved by HUD.

4. A narrative detailing the capacity of the proposed owner and management agent of the receiving property to own, operate, manage, and if applicable, renovate affordable housing.

5. The receiving owner must not be subject to any of the following actions that have not been resolved to HUD's satisfaction: (1) A charge from HUD concerning a systemic violation of the Fair Housing Act or a cause determination from a substantially equivalent state or local fair housing agency concerning a systemic violation of a substantially equivalent state or

local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status; and (2) A Fair Housing Act lawsuit filed by the Department of Justice alleging a pattern or practice of discrimination or denial of rights to a group of persons raising an issue of general public interest pursuant to 42 U.S.C. 3614(a); or (3) A letter of finding identifying systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974. HUD will determine if actions to resolve the charge, cause determination, lawsuit, or letter of findings are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to, current compliance with:

- a. A voluntary compliance agreement (VCA) signed by all the parties;
- b. A HUD-approved conciliation agreement signed by all the parties;
- c. A conciliation agreement signed by all the parties and approved by the state governmental or local administrative agency with jurisdiction over the matter;
- d. A consent order or consent decree;

or

- e. A final judicial ruling or administrative ruling or decision.

6. Documentation to assist HUD in an environmental review of the transfer request in accordance with environmental regulations and requirements at 24 CFR part 50. HUD will conduct the environmental review as required by part 50 prior to approving a transfer. HUD will document compliance on Form HUD-4128, "Environmental Assessment and Compliance Findings for the Related Laws." Applicants are responsible for submitting environmental information and reports, and should use Chapter 9 of the MAP Guide and the HUD Environmental Review Web site (available at <https://www.onecpd.info/environmental-review/>) for guidance on environmental review information requirements. If the transfer is to a site that is currently HUD-assisted, HUD-insured or HUD-held, a new Phase I Environmental Site Assessment (ESA) in accordance with ASTM E 1527-13 (or the most recent edition), including a Vapor Encroachment Screen in accordance with ASTM E 2600-10 (or the most recent edition), is *not* required, unless the transfer involves:

- a. Significant ground disturbance (digging) or construction not contemplated in the original application or incompatible with current engineering or institutional controls;
- b. Site expansion or addition;
- c. Transfer to a site for which a Phase I ESA in accordance with ASTM E 1527-05 (or a more recent edition) has not been prepared previously; or
- d. Any other activities which may result in contaminant exposure pathways not contemplated in the original application or incompatible with current engineering or institutional controls.

After a request has been submitted to HUD, the requestor and other participants in the proposed transfer, including owners and contractors on the receiving project, may not undertake or commit funds for acquisition, rehabilitation, conversion, or construction of the receiving property

until HUD has completed the environmental review and notified the requestor that the transfer to the receiving property is acceptable.

#### E. Post Approval Requirements

Once HUD has received and reviewed the materials above and approved the transfer under Section 214, the owner of the receiving project must do the following as applicable:

1. If there is a use restriction at the transferring property, sign a new or amended use restriction that includes all income and eligibility restrictions of the transferring use restriction and runs for the duration of the transferring project's existing use restriction or the use restriction at the receiving project, whichever is longer.

2. If the transfer involves project based section 8 assistance, renew the HAP contract for a 20-year term at the time of the transfer and attach the Preservation Exhibit agreeing to the automatic renewal of the Section 8 HAP contract at the end of the 20-year term, subject to annual appropriations, for a minimum of the time remaining on the HAP contract that was in effect prior to the transfer under Section 214.

3. Receive approval through the Previous Participation Process including a 2530 review. The receiving owner must be in compliance with all business agreements for the receiving project and for any other HUD insured or assisted projects owned.

4. Comply with all Departmental statutes, regulations, policies and procedures related to any assignment or amendment of a Section 8 HAP contract or other project-based rental assistance contract, required modification of loan documents and legal descriptions, or other necessary changes as a result of a Section 214 transfer.

#### F. Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at this HUD Headquarters Building, an advance appointment to review the FONSI must be scheduled by calling the Regulations

Division at 202-708-3055 (not a toll free number).

#### G. Information Collection Requirements

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0608. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

#### H. Implementation

This notice will become effective April 30, 2015. HUD will begin accepting requests for transfers pursuant to this notice on or after the effective date. For questions regarding the submission or status of a transfer request, interested parties should contact their HUD Multifamily Hub/Program Center. The list of HUD Multifamily Hubs and Program Centers is available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/hsgmfbus/abouthubspcs](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/hsgmfbus/abouthubspcs).

Dated: March 17, 2015.

**Biniam Gebre,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9716 ]

RIN 1545-BI65

#### **Certain Employee Remuneration in Excess of \$1,000,000 Under Internal Revenue Code Section 162(m)**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the deduction limitation for certain employee remuneration in excess of \$1,000,000 under the Internal Revenue Code (Code). These regulations affect publicly held corporations.

#### **DATES:**

*Effective date:* These regulations are effective on April 1, 2015.

*Applicability date:* For dates of applicability, see § 1.162-27(j)(2)(vi).