



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000**

Office of Housing

Congressional Implementation Plan

Budget Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Residential Units (Title LXXI, Section 81001)

Provided To:

**Committee on Appropriations and Financial Services of the United States
House of Representatives**

**Committees on Appropriations and Banking, Housing, and Urban Affairs of
the Senate**

March 4, 2016



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Introduction

Title LXXXI of the Fixing America's Surface Transportation Act (Public Law 114-94) authorizes the Department of Housing and Urban Development (HUD) to establish a demonstration program under which the Secretary may execute budget-neutral, performance-based agreements in fiscal years 2016 through 2019 that result in a reduction in energy or water costs. The legislation authorizes HUD to implement this pilot in up to 20,000 units of multifamily buildings participating in the project-based rental assistance (PBRA) program under section 8 of the United States Housing Act of 1937; supportive housing for the elderly program operating under section 202 of the Housing Act of 1959; and supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act.

The legislation states that HUD shall make payments under an agreement only during the applicable years that the cost savings occurs. This program operates under a Pay for Success financing framework, a strategy that can be applied across multiple policy areas to direct funds towards projects that result in positive social benefits, including measurable outcomes for communities, families, and individuals as well as the environment. Under the Pay for Success model, the government specifies concrete, measurable outcomes that it would like to achieve—in this case, reduced water and energy costs—and enters into a contract to pay for these results once they are demonstrated for specific people or communities in need. By structuring payments around measurable outcomes rather than a specific set of program inputs or activities, Pay for Success financing approaches can provide flexibility for policymakers to implement evidence-based solutions, carefully test promising innovations, and scale proven programs.

Under this Pay for Success demonstration, HUD is authorized to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program. This includes: raising capital from private investors and charitable organizations for the up-front costs of the Energy and Water Conservation Measures (EWCMS) to be installed under the program; credentialing energy service providers and facilitating their interaction with property owners; providing quality assurance for installed EWCMS either directly or through a third-party; retaining a third-party measurement and verification (M&V) provider; collecting payment from HUD if savings are realized and providing payments to project investors at their pre-agreed upon terms; and reporting regularly to HUD on the results of the M&V protocol. Payment by the Government will occur after agreed-upon savings have been achieved and verified by an independent third-party provider that conducts the M&V protocol.

The legislation requires HUD to submit to the Committees on Appropriations and Financial Services of the United States House of Representatives and the Committees on Appropriations and Banking, Housing, and Urban Affairs of the Senate a detailed implementation plan no later than 90 days after its enactment. This plan is being provided to both Committees to fulfill this requirement.



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Program Design Overview

HUD is in the process of designing this program based on statutory requirements, a review of the relevant literature and best practices, and lessons learned from similar programs administered by HUD and other federal agencies. The following are the major program elements currently under development. Details may change pending the results of further analysis.

Parties and Responsibilities

Although PFS has heretofore been used to deliver social service outcomes—e.g. reductions in recidivism—the same set of actors will be involved in this application. The government initiates the transaction by specifying desired outcomes for a target population (in this case, HUD-assisted multifamily properties) and then selects an intermediary to achieve them. The government holds the intermediary accountable for these outcomes and only makes payments when a pre-determined performance threshold is achieved.

The intermediary is the key actor in a PFS deal, responsible for creating and executing its own plan for implementation. This plan will include:

- Recruiting *investors* to provide capital and paying them debt service using success payments provided by the government
- Engaging and coordinating *service providers* (in this case, the energy contractors who will perform the retrofits)
- Retaining a third-party *measurement and verification provider* to verify outcomes

Performance Measures and Payment Thresholds

As stated in the authorizing legislation, payments made under this pilot program will be contingent on documented water and energy cost savings achieved at participating properties. The intermediary will be responsible for retaining a third-party measurement and verification provider to document savings. In the Notice of Funding Availability (NOFA) released for this program, HUD will broadly outline its approach to measurement and verification of energy and water savings and may indicate any thresholds or minimum levels of savings that will be required to trigger repayment to investors. Applicants will propose a programmatic approach that they believe will yield the expected level of savings across the entire pilot while satisfying all other program requirements. HUD will negotiate the final performance measurements and payment thresholds with organizations selected to participate and will only make payments if payment thresholds are met as stated in the agreement.

Payment Structure

HUD will consider whether the utility cost savings from installed EWCMs could be shared with property owners in order to provide greater incentive for program participation. HUD will



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develop the necessary protocols and procedures for retaining its share of savings realized through the program and use those funds to pay the intermediaries.

Program Evaluation and Reporting

Per authorizing legislation, HUD will be responsible for submitting annual program evaluation reports to Congress starting no later than a year after that law’s enactment. HUD’s Office of Policy Development and Research (PD&R) will have primary responsibility for administering and sending to Congress an annual program evaluation plan as required by the legislation. PD&R and the Office of Housing are collaborating on a program evaluation methodology. It should be noted that the first and/or second year annual evaluation will not be able to state results of this program since cost savings will have not yet occurred. The Office of Housing will ensure that data points needed to produce the annual evaluation are captured in the application and reporting questions developed for this program. PD&R may develop additional survey questions, if necessary.

Affordability Requirements

HUD will enforce the affordability requirements listed in the legislation which state that the property must be subject to affordability restrictions for at least 15 years after the completion of any conservation improvements made to the property under this pilot.

Competitive Selection Process for Intermediaries

HUD will develop and publish a NOFA and application materials to competitively select one or more intermediaries to carry out the responsibilities of administering this program. Table 1 below enumerates some of the key elements that HUD currently plans to include in this NOFA; the final document will have a number of other standard provisions as well.

Table 1. Key Pay for Success pilot NOFA Elements

Section Title	Requirements
General Information	Instructions for how to apply, due dates, available training materials and other general information.
Reporting Requirements	HUD will specify performance measures and detail reporting requirements for Measurement and Verification results. These requirements will flow from the internal program evaluation approach being developed in partnership with PD&R to ensure that intermediaries’ reporting fulfills all of HUD’s needs.
Audit, Quality Assurance and Quality Control Requirements	Applicants will provide a quality assurance and quality control plan that will detail their strategy for ensuring that work is completed as proposed and which outlines how problems that arise will be resolved.



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Required Experience	HUD will detail the number of years an applicant or consortia must have financing or operating affordable multifamily properties receiving assistance from eligible programs, overseeing energy and water conservation programs, and raising private capital. HUD will make clear that applicants are encouraged to put together consortia in order to bring all of the required qualifications to the application. However, a single intermediary or its Special Purpose Vehicle will have the sole legal responsibility for reporting and distributing payments received from property owners.
Financial Capacity	HUD will require the applicant to detail their strategy for recruiting and/or receiving commitments from investors and demonstrate that it has the necessary financial viability to operate the program for the first two years, in advance of any measurable cost savings being achieved.
Proposed Operational Approach	Applicants will provide their proposed operational approach to completing the proposed project, including the overall timeline, staffing structure, and resource allocation.
Portfolio Prospectus	HUD will ask applicants to list the number and geographic dispersion of proposed projects. Applicants will also provide financial performance estimates with breakdowns by building characteristics, project type, and others, including top-line estimates for performance measures identified by HUD. HUD will negotiate the final payment thresholds with organizations selected to participate.
Service Providers	Applicants will state the qualifications for contractors participating in the program and outline their approach to facilitating interactions between the contractors and property owners (i.e. with whom the contractor will have a contractual relationship).

HUD’s goal is to publish the NOFA by the end of fiscal year 2016. HUD will produce evaluation criteria to select winners from application information and then negotiate agreements with successful organizations.

Program Implementation

The organizations selected as intermediaries will be responsible for executing the proposals outlined in their applications. Agreements will offer intermediaries flexibility to alter their EWCM strategies if they determine during the agreement period that they can improve energy and/or water conservation savings by altering their approach. HUD will develop an internal program administration plan which will detail all of the requirements and processes required for administering the program. It is expected that each office within the Office of Housing will have responsibility for different aspects of the program, including program coordination, any changes to Housing Assistance Payment (HAP) contracts and Utility Allowances, field coordination and training, developing and disseminating standard operating procedures for the administrative



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functions required for the program, and contract support.

The following are expected to be the major elements of the plan, but details may change pending the results of further analysis.

Regulatory Waivers and Administrative Changes

Some regulatory and administrative changes may be required in order to put in place the necessary procedures and systems for administering the program. The specific changes will vary across programs and vary within each program depending on which assistance contract is in effect at a given property. Regulatory waivers granted for this program will follow normal HUD procedures. Office of Housing will coordinate with HUD's Office of General Counsel (OGC) to ensure that the program complies with all existing program regulations and restrictions.

Management of Performance-Based Agreements

Office of Housing and OGC will draft a performance-based agreement that enforces all statutory restrictions along with agreed-upon minimum performance standards that will serve as payment thresholds. Selected intermediaries will enter into agreements with HUD (to be managed by Office of Housing) for a maximum of 12 years.

Field Staff Outreach and Training

Office of Housing will administer the technical assistance (TA) protocols established in the program administration plan. TA will assist in determining the role of field staff in recruiting program participants, their relationship with the intermediaries, and their operational responsibilities. In order to maximize the effectiveness of very limited available resources for TA, Office of Housing will assemble a project team in each of the five regions. The teams will disseminate information and training materials to regional staff potentially impacted by the program and handle operational tasks (e.g. adjustments to HAPs and utility allowances for participating properties).

Systems Management

HUD will determine the information technology requirements for administering this program as it becomes more developed. It may be necessary to make modifications to existing data collection systems, including the Integrated Real Estate Management System and Tenant Rental Assistance Certification System and these changes may require funding to implement.