

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, the cap on the number of assisted units in each project, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to inspections, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows a PHA that already administers a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units (plus an additional 10 percent for units meeting certain criteria)

and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. Assistance may be tied to a multifamily building or a single-family building. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)]. A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers and when the PHA executes, amends, or extends a HAP contract. The PHA must also state in its administrative plan that it will engage in project-basing and must amend its administrative plan to include all PBV-related matters over which the PHA is exercising its discretion.

PHA Policy

The PHA will operate a project-based voucher program using up to 20% of its authorized units for project-base assistance

See Exhibit 17-XX for information on projects to which the PHA has attached PBV assistance.

The PHA may enter into a HAP contract for existing housing, newly constructed or rehabilitated housing (see definitions below). During the term of the HAP contract, the PHA makes housing assistance payments to the owner for units leased and occupied by eligible families. If PBV units are already selected for project-based assistance either under an agreement to enter a HAP Contract (Agreement), the PHA is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for PBV and ensuring that the amount of assistance that is attached to units is within amounts available under the ACC, regardless of whether the PHA has vouchers or project-basing.

The PHA may project-base an additional 10% of its units above the 20% program limit. The units may be distributed among one, all, or combination of the categories as long as the total number of units does not exceed the 10% cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that need the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule (24 CFR 578.3).
- Are specifically made available to house families that are composed of, or include, a veteran.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20% or less, as determined in the most recent American Community Survey Five-Year Estimates.

17-I.B. PBV DEFINITIONS [24 CFR 983.3]

The following terms apply to the PBV program and are used throughout this chapter:

Excepted units are units in a project not counted toward the project cap because they exclusively serve or are made available to certain families in accordance with 24 CFR 983.54(c)(2).

Excluded units are units in a project not counted toward the program cap or project cap because they meet certain criteria in accordance with 24 CFR 983.59.

Existing housing is a project that meets the following criteria:

- All the proposed contract units in the project either fully comply or substantially comply with NSPIRE on the proposal or project selection date, as determined per 24 CFR 983.103(a). (The units must fully comply with NSPIRE at the time required by 24 CFR 983.103(c). The units substantially comply with NSPIRE if:
 - The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and
 - The PHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.
- The PHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the project selection date (for projects excepted from competitive selection) through the first two years of the HAP contract.
- The following units do not qualify as existing housing:
 - Units for which rehabilitation or new construction began after proposal submission or the date of board resolution but prior to the effective date of an AHAP (if applicable); and
 - Units that were newly constructed or rehabilitated in violation of program requirements.

An *independent entity* is either:

- The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or
- A HUD-approved entity that is autonomous and recognized under state law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

An *in-place family* is a family residing in a proposed contract unit on the proposal or project selection date.

Newly constructed housing is a project containing housing units that do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.

A *PHA-owned unit* is a dwelling unit in a project that is:

- Owned by the PHA (including having a controlling interest in the entity that owns the project);
- Owned by an entity wholly controlled by the PHA; or
- Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.
 - A *controlling interest* is:
 - Holding more than 50 percent of the stock of any corporation;
 - Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a nonprofit corporation);
 - Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
 - Holding more than 50 percent of all managing member interests in an LLC;
 - Holding more than 50 percent of all general partner interests in a partnership; or
 - Equivalent levels of control in other ownership structures.

A *project* can be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. “Contiguous” in this definition includes “adjacent to,” as well as touching along a boundary or a point. A PHA may, in its administrative plan, establish the circumstances under which it will define a project as only one of the following: a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

PHA Policy

The PHA will not define circumstances that limit the definition of the term *project*.

Rehabilitated housing is a project which is developed for use under the PBV program, in which all proposed contract units exist on the proposal or project selection date, but which does not qualify as existing housing.

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Income (AMI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Substantial improvement is one of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract:

- Remodeling that alters the nature or type of housing units in a project;
- Reconstruction; or

A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

17-I.C. MAXIMUM NUMBER OF PBV UNITS (PERCENTAGE LIMITATION) **[24 CFR 983.6]**

Program Cap

If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher Annual Contributions Contract (ACC). Except for certain units discussed below, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units, as adjusted, at the time of commitment, with the ability to project-base an additional 10 percent of units that meet certain requirements. An analysis of impact must be conducted if a PHA is project-basing 50 percent or more of the PHA's authorized voucher units.

All PBV units which the PHA has selected (from the time of the proposal or project selection date) or which are under an Agreement to enter into a HAP Contract (AHAP) or HAP contract for PBV assistance count toward the 20 percent maximum or increased cap. The PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC. Appendix I of Notice PIH 2017-21 contains a sample PBV program cap calculation worksheet. If PBV units are already selected for project-based assistance either under an AHAP or a HAP contract, the PHA is not required to reduce the number of units if the number of authorized units is subsequently reduced.

Increased Cap [24 CFR 983.6(d)]

The PHA may project-base an additional 10 percent of its authorized voucher units above the 20 percent program limit, provided the units meet requirements outlined in 24 CFR 983.6(d)(1) or (2). The units may be distributed among one, all, or a combination of the categories described below, as long as the total number of units does not exceed the 10 percent cap. The PBV HAP contract must specify, and the owner must set aside, the number of units meeting the conditions to qualify for the increased program cap. To qualify for the increased program cap, the unit must be occupied by the type of family specified in the applicable paragraph below.

For units under a HAP contract that was first executed on or after April 18, 2017, or added on or after that date to a current HAP contract entered into prior to April 19, 2017, units qualify under the increased program cap if the units meet one or more of the conditions below [24 CFR 983.6(d)(1)]:

- The units are specifically made available to house individuals and families that meet the definition of *homeless* under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
 - A family qualifies if they were homeless at the time the family first occupies the unit.
- The units are specifically made available to house families that are composed of or include a veteran at the time the family first occupies a unit.
 - A *veteran* is a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.
- The units provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
 - A disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit. The member of the family may choose not to participate in the services.
 - *Supportive housing* means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing.
 - Such supportive services need not be provided by the owner or onsite but must be reasonably available to the families receiving PBV assistance in the project.
 - The PHA's administrative plan must describe the type and availability of supportive services the PHA will consider as qualifying for the 10 percent increased cap.
- The units are located in areas where vouchers are difficult to use.
- The units replace, on a different site, units listed in 24 CFR 983.59(b)(1) and (2) for which the PHA had authority under 24 CFR 983.59 to commit PBV assistance on the original site without the units counting toward the program cap or project cap.

The increased program cap also applies to units that are part of a HAP contract executed on or after December 27, 2020, or are added on or after that date to any current HAP contract, including a contract entered into prior to December 27, 2020, and meet the following requirements [24 CFR 983.6(d)(2)]:

- The units are exclusively made available to eligible youth receiving Family Unification Program (FUP) or Foster Youth to Independence (FYI) assistance; and
- If the units exclusively made available to eligible youth use FUP assistance that is normally available for eligible families and youth, the PHA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP/FYI populations (families and youth) and amends its administrative plan to specify that FUP/FYI PBV assistance is solely for eligible youth.

PHA Policy

The PHA will project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.

[See the Instruction Guide for Chapter 17 and insert information on applicable unit types.]

17-I.D. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR 983.54]

Project Cap [24 CFR 983.54(a)]

In general, the PHA may not select a proposal for units in a project or enter into an AHAP or a HAP contract to provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted, as adjusted) in the project.

Higher Project Cap [24 CFR 983.54(b)]

The PHA may provide PBV assistance to the greater of 25 units or 40 percent of the number of dwelling units (assisted and unassisted, as adjusted) in the project if the project is located in an area where vouchers are difficult to use [24 CFR 983.54(b)]. An area where a voucher is difficult to use is defined as:

- A census tract with a poverty rate of 20 percent or less, as determined by HUD;
- A ZIP code area where the rental vacancy rate is less than 4 percent, as determined by HUD; or
- A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area or county FMR.

Exceptions to the Project Cap [24 CFR 983.54(c)]

Certain units are removed from the number of dwelling units for purposes of calculating the project cap. These are known as *excepted units*, which are defined as units in a project not counted toward the project cap because they exclusively service or are made available to certain families.

The PHA determines the number of units in the project for which the PHA will provide project-based assistance, including whether and how many units will be excepted. The PBV HAP contract must specify, and the owner must set aside, the number of excepted units made available for occupancy by families who qualify for the exception. For a unit to be considered excepted, it must be occupied by a family who qualifies for the exception.

Which units are considered excepted differs depending on when the HAP contract was executed. Contracts executed prior to April 18, 2017, follow the “old” statutory PBV requirements for excepted units. Projects where the HAP contract was executed on or after April 18, 2017, follow new requirements. In this case, PBV units are not counted toward the project cap if the units are:

- Exclusively for elderly families;
- Exclusively made available to eligible youth receiving FUP or FYI assistance; or
- For households eligible for supportive services available to all families receiving PBV assistance in the project.

PHA Policy

The PHA will develop housing for occupancy by families in need of services. This may include disabled families; families in need of particular supportive services listed below; or

families participating in the Family Self-Sufficiency (FSS) program. The families must receive the services, or successfully complete the service program, to be eligible for continued occupancy. Families that do not continue to receive the services or complete the required service program will be terminated in accordance with the PHA policies in section (FIND TERMINATION SECTION). The following types of services will be provided depending on the needs of the family:

- Transportation for activities including, but not limited to, grocery shopping and attending medical/dental appointments
- Treatment for persistent and chronic mental illness, including on-site or referral supportive case management
- Supervised taking of medications
- Treatment for drug, and/or alcohol, rehabilitation in the case of current abusers
- Training in housekeeping and homemaking activities
- Financial Opportunity Center coaching (family budgeting)
- Work development skills and job training
- Whole Family Approach (WFA) coaching supportive services

On a quarterly basis, the PHA will monitor all families that are receiving services to determine if such families will be allowed to continue receiving PBV assistance. The PHA will require families receiving services to provide written evidence from each service provider that the family has received all of the required services stated in the statement of family obligations or FSS contract of family participation. Alternatively, each service provider will submit a report to the PHA identifying the services required in the statement of family obligations or FSS contract of participation were received.

A project is not limited to a single exception category but may include excepted units from any of the exception categories.

PHA Policy

The PHA will have excepted units in certain PBV projects.

[See the Guide for Chapter 17 and insert information on applicable unit types.]

Units that No Longer Qualify as Excepted Units or Units under the Increased Program Cap [24 CFR 983.262(b)]

In order to qualify as either excepted units or units under the increased program cap, units must be occupied by a family that meets the exception criteria applicable to the unit. Once the family vacates the unit, the PHA must select a new family from the waiting list via an admission preference, and the unit must be made available to and occupied by a family that meets the applicable exception.

The PHA must specify in its administrative plan which of the options below the PHA will take if a unit is no longer qualified due to circumstances beyond the control of the family (e.g., death of an elderly family member or long-term permanent hospitalization or nursing care).

The unit may continue to count as an excepted unit or unit on the increased program cap as long as the family resides in the unit. However, the requirements on wrong-sized units apply.

If the PHA chooses not to exercise this discretion, the unit is no longer considered excepted or a unit under the increased program cap (as applicable) and the family is not required to move from

the unit. The PHA must specify which of the following actions it will take if the unit is no longer qualified:

- Substitute the unit for another unit if it is possible to do so in accordance with 24 CFR 983.207(a), so that the overall number of excepted units or units under the increased program cap in the project is not reduced. The PHA may, in conjunction with such substitution, add the original unit to the HAP contract if it is possible to do so in accordance with 24 CFR 983.207(b), including that such addition does not cause the PHA to exceed the program cap or become non-compliant with the project cap.
- Remove the unit from the PBV HAP contract. In conjunction with the removal, the PHA may provide the family with tenant-based assistance, if the family is eligible for tenant-based assistance. The family and the owner may agree to use the tenant-based voucher in the unit; otherwise, the family must move from the unit with the tenant-based voucher. If the family later vacates the unit, the PHA may add the unit to the PBV HAP contract in accordance with 24 CFR 983.207.
- Change the unit's status under the project cap or program cap, as applicable, provided that the change does not cause the PHA to exceed the program cap or become non-compliant with the project cap.

PHA Policy

If, due to circumstances beyond the control of the family, the unit is no longer qualified as an excepted unit or unit under the increased program cap, the unit will continue to count as long as the family resides in the unit. However, requirements for wrong-sized units will apply.

17-I.E. UNITS NOT SUBJECT TO THE PBV PROGRAM CAP OR PROJECT CAP [FR Notice 1/18/17 and 24 CFR 983.59]

For HAP contracts that first became effective on or after April 18, 2017, the PHA may commit project-based assistance to units that meet the requirements below without the units counting toward the program cap (including the 10 percent exception) or project cap. These are known as *excluded units* and fall into two different categories:

- **Existing or Rehabilitation Units:** In the five years prior to the request for proposals (RFP) or the proposal or project selection date (in the case of selection without RFP), these units fall into one of the categories described below, provided that the units are removed from all categories prior to the effective date of the HAP contract. These units include units that received one of the following forms of HUD assistance:
 - Public Housing Capital or Operating Funds;
 - Project-Based Rental Assistance (Section 8), including units assisted under Section 8 Moderate Rehabilitation (Mod Rehab) and Mod Rehab Single-Room Occupancy (SRO) programs;
 - Housing for Elderly (Section 202);
 - Housing for Persons with Disabilities (Section 811);

- Rental Assistance Program (RAP) (Section 236(f)(2) of the National Housing Act); or Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978).

Or the units have been subject to a federally required rent restriction under one of the following programs:

- The Low-Income Housing Tax Credit program (26 U.S.C. 42);
- Section 515 Rural Rental Housing Loans (42 U.S.C. 1485); or
- The following HUD programs:
 - Section 236;
 - Section 221(d)(3) Below Market Interest Rate;
 - Housing For the Elderly (Section 202 of the Housing Act of 1959);
 - Housing for Persons with Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act);
 - Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978); or
 - Any other program identified by HUD through Federal Register notice subject to public comment.
- **Replacement Units:** Newly constructed units developed under the PBV program are also considered excluded units if the primary purpose of the newly constructed units is or was to replace units that meet the criteria listed above. The newly constructed unit must be located on the same site as the unit it is replacing; however, an expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. In addition, in order for the replacement units to be excluded from the program and project caps, one of the following must be true:
 - Former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV newly constructed project when it is ready for occupancy; or
 - Prior to the demolition of the original project, the PBV newly constructed project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

PHA Policy

Units in the following projects are not subject to the program cap or project cap because they are excluded units:

[Insert the names of projects where units are not subject to the program cap or project cap because they were previously subject to federal rent restrictions or received another type of long-term housing subsidy.]

17-I.F. PHA-OWNED UNITS [24 CFR 982.4 and 983.57]

For PHA-owned units (as defined in 24 CFR 982.4), an independent entity (as defined in 24 CFR 982.4) must perform the following functions:

- Determine rent to owner, including rent reasonableness and calculating any rent adjustments by HUD's Operating Cost Adjustment Factor (OCAF) (where applicable), in accordance with 24 CFR 983.301 through 983.305;
- Perform unit inspections in accordance with 24 CFR 983.103(g);
- When the owner carries out development activity or substantial improvement, the independent entity must review the evidence and work completion certification submitted by the owner and determine if the units are complete in accordance with 24 CFR 983.156; and
- Determine whether to approve substantial improvement to units under a HAP contract in accordance with 24 CFR 983.212.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity may not charge the family any fee for the appraisal, or the services provided by the independent entity.

PHA Policy

The PHA may submit a proposal or select a project that is owned or controlled by the PHA. The PHA will obtain HUD approval of **[insert name of entity]** prior to selecting PHA-owned housing.

17-I.G. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2(c).

PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program.

17-I.H. RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to

cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

17-I.I. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PROPOSAL AND PROJECT SELECTION

17-II.A. OVERVIEW

The PHA must include a description of the circumstances under which the PHA will use noncompetitive selection for PBV projects and competitive selection for PBV proposals, including the procedures for submission and selection of such proposals, in the administrative plan [24 CFR 983.10(b)(3)].

Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.52 and 983.53], complies with the cap on the number of PBV units per project [24 CFR 983.54], and meets the site selection standards [24 CFR 983.55]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51.

The PHA may allow for entities that have site control to submit proposals provided the entity will be the owner prior to entering into the AHAP or HAP contract. An owner may submit, and a PHA may select, a single proposal covering multiple projects where each project consists of a single-family building, provided all projects are the same housing type (existing, rehabilitated, or newly constructed) [24 CFR 983.51(a)].

A PHA may not commit project-based assistance to a project if the owner or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR Part 2424 or is listed on the U.S. General Services Administration list of parties excluded from federal procurement or non-procurement programs. HUD approval of specific projects or owners is not required. For example, owner proposal selection does not require submission of form HUD-2530 (Previous Participation Certification) or other HUD previous participation clearance.

Selection of PHA-Owned Units [24 CFR 983.51(h)]

A PHA-owned unit (as defined in 24 CFR 982.4) may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and

determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA's administrative plan.

With the exception of projects selected in accordance with 24 CFR 983.51(c) (projects that meet the criteria to be excepted from competitive selection), the PHA's selection procedures must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give preferential treatment (e.g., additional points) to PHA-owned units.

17-II.B. COMPETITIVE SELECTION OF PROPOSALS [24 CFR 983.51(b)]

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods:

- PHA request for PBV Proposals. The PHA may solicit proposals by using a RFP to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites. The PHA may establish selection procedures that combine or are in conjunction with other federal, state, or local government housing assistance, community development, or supportive services competitive selection processes. If the PHA selection process is combined and administered in conjunction with another RFP process, the PHA remains responsible for complying with proposal selection procedures as described in 24 CFR 983.51.
- The PHA may select, without issuing an RFP, proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that was subject to a competition in accordance with the requirements of the applicable program where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competition did not involve any consideration that the project would receive PBV assistance.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(d)]

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

PHA Policy

PHA Request for Proposals for Rehabilitated and Newly Constructed Units

The PHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in newspapers of general circulation (to be identified at the time of publication) as well as Central Missouri Community Action (CMCA) county resource offices and social media accounts.

In addition, the PHA will post the RFP and proposal submission and rating and ranking procedures on its website. The advertisement will remain on the PHA's website until such time as the application period is closed.

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements and that the Federal Labor Standard provisions may be applicable for new and rehabilitation projects.

The PHA will publish its advertisement in the same newspaper used for publication of the RFP for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Proposals will be due in the PHA office by close of business 30 calendar days from the date of the last publication. The PHA will date and time stamp all applications upon receipt. Applications received after the published deadline date will not be accepted for consideration under the RFP process. Postmarks are not acceptable.

In order for the proposal to be considered, the owner must submit the proposal to the PHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP and be in compliance with all HUD program requirements. Incomplete proposals will not be reviewed. The PHA reserves the right to reject applications at any time for misinformation, errors, or omissions of any kind.

The PHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;

- Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

- In order to promote partially assisted projects, projects where less than 25 percent of the units will be assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the PHA will rate partially assisted projects on the percentage of units assisted. Projects with the lowest percentage of assisted units will receive the highest score.

PHA Requests for Proposals for Existing Housing Units

The PHA will advertise its request for proposals (RFP) for existing housing in newspapers of general circulation (to be identified at the time of publication).

In addition, the PHA will post the notice inviting such proposal submission and the rating and ranking procedures on its website. The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

The PHA will periodically publish its advertisement in the same newspaper used for publication of the RFP for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

- Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

- Extent to which units are occupied by families that are eligible to participate in the PBV program.

PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The PHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits (if the earlier competition did not involve any consideration that the project would receive PBV assistance) on an ongoing basis.

The PHA may periodically advertise that it is accepting proposals, in newspapers of general circulation (to be identified at the time of publication).

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements and that the Federal Labor Standard provisions may be applicable for new and rehabilitation projects.

In addition to, or in place of advertising, the PHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The PHA will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities; and

Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community.

17-II.C. NON-COMPETITIVE PROJECT SELECTION [24 CFR 983.51(c)]

The PHA may select units without a competitive selection process in certain circumstances described in 24 CFR 983.51(c) and FR Notice 8/13/24. Prior to selecting units based on the below criteria, the PHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan. If this requirement is not met, the PHA may not select units non-competitively.

The PHA may select units for PBV assistance without following a competitive process in the following circumstances:

- The PHA may select existing, newly constructed, or rehabilitated public housing projects where the PHA has an ownership interest or over which the PHA has control, when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site.
 - The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory through any available legal removal tool within five years of the project selection date.
- The PHA may select for future PBV assistance a project currently under the public housing program, or a project that is replacing the public housing project, in which a PHA has no ownership interest, or which a PHA has no control over, provided:
 - The public housing project is either still in the public housing inventory or had been removed from the public housing inventory through any available legal removal tool within five years of the project selection date;
 - The PHA that owned or owns the public housing project does not administer the HCV program;
 - The project selected for PBV assistance was specifically identified as replacement housing for the impacted public housing residents as part of the public housing demolition/disposition application, voluntary conversion application, or any other application process submitted to and approved by HUD to remove the public housing project from the public housing inventory; and
 - With respect to replacement housing, the PHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.

- The PHA may select a project consisting of PHA-owned units as defined at 24 CFR 982.4.
 - The units must continue to meet the definition of PHA-owned for the initial two years of the HAP contract unless there is a transfer of ownership approved by HUD.
- The PHA may select a project that underwent an eligibility event within five years of the project selection date, in which a family (or families) qualifies for enhanced voucher assistance and provides informed consent to relinquish its enhanced voucher for PBV assistance.
- The PHA may select one or more PBV projects with units made exclusively available to VASH families on the site of a VA facility [FR Notice 8/13/24].
 - The method of project selection must comply with all other requirements under 24 CFR 983.51, including that the PHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan and to ensure any project selection is consistent with the PHA administrative plan.

PHA Policy

The PHA may noncompetitively attach PBVs to projects as described above. If the PHA does intend to select units noncompetitively, the PHA will first notify the public through the PHA's 5-Year Plan process and will include the procedures for submission and selection to address under what circumstances the PHA will use this method.

17-II.D. PROJECT OR PROPOSAL SELECTION [24 CFR 983.51(f) and 24 CFR 983.153(c)(3)]

Inspections Required Prior to Project or Proposal Selection [24 CFR 983.51(e)]

The PHA must examine the proposed site before the proposal or project selection date to determine whether the site complies with the site selection standards outlined in 24 CFR 983.55.

The PHA may execute a HAP contract for existing housing if:

- All proposed contract units in the project fully or substantially comply with NSPIRE regulations on the proposal or project selection date, which the PHA must determine via inspection;
- The project meets the environmental review requirements at 24 CFR 983.56, if applicable; and
- The project meets the initial inspection requirements in accordance with 24 CFR 983.103(c).

PHA Written Notice of Proposal or Project Selection [24 CFR 983.51(f) and (h) and 24 CFR 983.153(c)(3)]

Regardless of the method of selection, the PHA is required to provide written notice of proposal or project selection, which must include:

- If the project contains PHA-owned units, the PHA must provide the written notice of proposal or project selection to the responsible PHA official, and that official must certify in writing that the PHA accepts the terms and requirements stated in the notice. The PHA must make documentation available for public inspection regarding the basis for the PHA selection of a PBV proposal.

- When an environmental review is required, if the review has not been conducted prior to the project or proposal selection date, the PHA's written notice that the selection is subject to completion of a favorable environmental review and that the project or proposal may be rejected based on the results of the environmental review.
- For newly constructed housing and rehabilitated housing in projects to which labor standards apply, the PHA's written notice to the party that submitted the selected proposal or board resolution approving project-basing of assistance at the specific project must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination [24 CFR 983.153(c)(3)].

In addition to the requirements above, for selection of proposals through competitive methods, the PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The proposal selection date is the date on which the PHA provides written notice to the party that submitted the selected proposal. The written notice of proposal selection must require the owner or party that submitted the selected proposal to provide a written response to the PHA accepting the terms and requirements stated in the notice. The PHA must make documentation available for public inspection regarding the basis for the PHA selection of a PBV proposal.

PHA Policy

If the project does not contain PHA-owned units, the PHA will notify the selected owner in writing of the owner's selection for the PBV program within 10 business days of the PHA making the selection. The PHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

If the project contains PHA-owned units, within 10 business days of the PHA making the selection, the PHA will provide the written notice of proposal selection to the responsible PHA official, and that official must certify in writing that the PHA accepts the terms and requirements stated in the notice within 10 business days of receiving the PHA's written notice.

When an environmental review is required, if the review has not been conducted prior to the proposal selection date, the PHA's written notice of proposal selection will state that the selection is subject to completion of a favorable environmental review and that the proposal may be rejected based on the results of the environmental review.

For any project to which labor standards apply, the PHA's written notice will state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

The PHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers the PHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The PHA will also post the notice of owner selection on its website.

The PHA will make available to any interested party its rating and ranking sheets and documents that identify the PHA basis for selecting the proposal. These documents will

be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The PHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The PHA will make these documents available for review at the PHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

The owner must submit a written response to the PHA accepting the terms and requirements stated in the notice within 10 business days of the PHA's written notification to the owner.

In addition to the requirements above, for projects selected under an exception to the competitive process under 24 CFR 983.51(c), the PHA must give prompt written notice of project selection to the owner following the PHA board's resolution approving the project-basing of assistance at the specific project. The project selection date is the date of the PHA's board resolution approving the project-basing of assistance at the specific project. The written notice of project selection must require the owner of the project selected to provide a written response to the PHA accepting the terms and requirements stated in the notice.

PHA Policy

If the project contains PHA-owned units, within 10 business days of the board's resolution approving the project-basing of assistance at a specific project, the PHA will provide the written notice of project selection to the responsible PHA official, and that official must certify in writing that the PHA accepts the terms and requirements stated in the notice within 10 business days of receiving the PHA's written notice.

If the project does not contain PHA-owned units, within 10 business days of the board's resolution approving the project-basing of assistance at a specific project, the PHA will notify the owner in writing of the project's selection. The owner must submit a written response to the PHA accepting the terms and requirements stated in the notice within 10 business days of the PHA's written notification to the owner.

In addition, when an environmental review is required, if the review has not been conducted prior to the project selection date, the PHA's written notice of project selection will state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review.

Further, for any project to which labor standards apply, the PHA's written notice will state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

17-II.E. HOUSING TYPE [24 CFR 983.52]

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals. With certain exceptions, the PHA may not execute a HAP contract for units:

- On which construction or rehabilitation commenced after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection); and
- Prior to the effective date of an AHAP.

However, HUD makes an exception in the following circumstances:

- The PHA has exercised its discretion under 24 CFR 983.154(f) to undertake development activity without an AHAP; or
- The PHA has executed an AHAP after construction or rehabilitation that complied with applicable requirements of 24 CFR 983.153 has commenced; or
- The PHA will undertake development activity after execution of the HAP contract as authorized under 24 CFR 983.157.

At HUD's sole discretion, HUD may approve a PHA's request for additional exceptions to this prohibition.

17-II.F. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Units [24 CFR 983.52]

A HAP contract must not be effective and no PBV assistance may be provided for any of the following: shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; and transitional housing. Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own a fee title to the real property (land) on which the manufactured home is located.

In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program.

Before a PHA places a specific unit under a HAP contract, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance in accordance with 24 CFR 982.201. For a family to be eligible for assistance in the specific unit, the unit must be appropriate for the size of the family under the PHA's subsidy standards and the total tenant payment (TTP) for the family must be less than the gross rent for the unit. The PHA must not enter into a HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

However, unlike in the regular PBV program, the PHA may opt to select an occupied unit or admit a family to a unit if such unit is made exclusively available to VASH families if the PBV project is either on the grounds of a VA facility or there are VASH supportive services provided on-site at the project. See Chapter 19 for more information.

Subsidized Housing [24 CFR 983.53]

A HAP contract must not be effective and no PBV assistance may be provided in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance; or
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements. For this purpose, *housing subsidy* does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

17-II.G. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.11, 24 CFR 983.153(b), 24 CFR 4.13, Notice PIH 2013-11, and FR Notice 3/13/23]

Development Activity Before HAP Contract [24 CFR 983.153(b)]

As part of the PBV project or proposal selection process, the project owner must disclose information regarding all HUD and/or other federal, state, or local governmental assistance committed to the project, as well as other governmental assistance, using **Form HUD-2880** (even if no other governmental assistance is received or anticipated) [FR Notice 3/3/23].

HUD requires a subsidy layering review (SLR) be conducted when new construction or rehabilitation housing will include PBVs in combination with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The SLR must occur before the PHA attaches PBV assistance to a project. This means when an SLR is required, the PHA may not execute an AHAP or HAP contract until HUD or a HUD-approved housing credit agency (HCA) has conducted the required subsidy layering

review and determined the project compliance with 24 CFR 4.13 and other related regulation requirements with regards to attaching PBV assistance. Subsidy layering requirements also do not apply to existing housing when PBV is the only governmental assistance.

Conducting the SLR [FR Notice 3/3/23 and Notice PIH 2023-15]

PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. The PHA is responsible for collecting all required documentation for the SLR from the project owner. Appendix A of FR Notice 3/23/23 contains a list of all required documentation. The owner must inform the PHA if any information changes during or after the application process. If new information becomes available after initial submission, the PHA is responsible for submitting updated information to HUD or the HCA.

If HUD completes the SLR and determines the PBV assistance complies with all requirements, HUD will notify the PHA in writing. If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

Additional Assistance after HAP Contract [24 CFR 983.11(d)]

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements, unless the owner discloses additional assistance in accordance with HUD requirements [24 CFR 983.11(d)].

For newly constructed or rehabilitated housing under a HAP contract, the owner must disclose to the PHA information regarding any additional related assistance from the federal government, a state, or a unit of general local government, or any agency or instrumentality thereof. *Related assistance* includes but is not limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. If the additional related assistance meets certain threshold and other requirements established by HUD, a subsidy layering review may be required to determine if it would result in excess public assistance to the project. The PHA must adjust the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

17-II.H. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and Site and Neighborhood Standards [24 CFR 983.55(b)]

The PHA may not select a project or proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an AHAP or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. **The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.**

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights

Laws, regulations, and Executive Orders, and that the site meets the housing quality standards and neighborhood standards at 24 CFR 5.703.

PHA Policy

It is the PHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the PHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the PHA will grant exceptions to the 20 percent standard where the PHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community;

- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

- A census tract where there has been an overall decline in the poverty rate within the past five years; or

- A census tract where there are meaningful opportunities for educational and economic advancement.

The PHA will also consider whether the site 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 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR Part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629) and HUD's implementing regulations at 24 CFR Parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652), and HUD's implementing regulations at 24 CFR Part 107.

The site must also be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations (28 CFR Part 35), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR Part 8, including meeting the Section 504 site selection requirements described in 24 CFR 8.4(b)(5).

The PHA will also consider whether the site and neighborhood are reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants. The site and neighborhood may not be subject to serious

adverse environmental conditions, natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.55(d)]

The PHA may not enter into an AHAP or HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards.

The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.55(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- 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;

- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-II.I. ENVIRONMENTAL REVIEW [24 CFR 983.56]

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58, other than where exceptions are provided in the PBV regulations.

For projects or proposals that were selected in accordance with the site selection standards at 24 CFR 983.55 in effect on or after June 6, 2024, no environmental review is required to be undertaken before entering into a HAP contract for existing housing, except to the extent a Federal environmental review is required by law or regulation relating to funding other than PBV.

When an environmental review is required, the responsible entity is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the review has not been conducted prior to the proposal or project selection date, then the PHA's written notice of proposal or project selection must state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review. The PHA may not enter into an AHAP or HAP contract until the responsible entity has complied with the environmental review requirements.

The PHA may not enter into an AHAP or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

- The responsible entity has determined that the activities to be undertaken are exempt under 24 CFR 85.34(a) or categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b);
- The responsible entity has completed the environmental review procedures required by 24 CFR Part 58, and HUD has approved the PHA's Request for Release of Funds and Certification (form HUD-7015.15)
 - HUD approves the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD-7015.16, thereby authorizing the PHA to execute an AHAP or HAP contract, as applicable; or
- HUD has performed an environmental review under 24 CFR Part 50 and has notified the PHA in writing of environmental clearance.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special NSPIRE standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting inspections.

17-III.B. NSPIRE STANDARDS [24 CFR 983.101]

NSPIRE standards for the tenant-based program, including those for special housing types, generally apply to the PBV program. Housing quality standards/NSPIRE standards requirements for shared housing, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The owner is required to maintain and operate the contract units and premises in accordance with NSPIRE standards, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the AHAP and the HAP contract. These requirements must be in addition to, not in place of, compliance with NSPIRE standards. The PHA must specify the conditions under which it will require additional housing quality requirements in the administrative plan.

PHA Policy

The PHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The PHA will specify any special design standards or additional requirements in the invitation for PBV proposals (if applicable), the AHAP, and the HAP contract.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implement regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS [24 CFR 983.103]

The PHA must inspect contract units whenever needed to determine that the contract units comply with NSPIRE standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

Pre-selection Inspection [24 CFR 983.103(a)]

If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date and must determine if the project meets the definition of *existing housing*. If the project is existing housing, the PHA may not execute the HAP contract until the units meet the initial inspection requirements in accordance with 24 CFR 983.103(c).

Initial Inspection: Newly Constructed and Rehabilitated Projects That Underwent Substantial Improvement [24 CFR 983.103(b)]

Following completion of work pursuant to 24 CFR 983.155, the PHA must complete the following inspections, as applicable:

- For rehabilitated housing that is developed prior to the HAP contract term or newly constructed housing, the PHA must inspect each proposed newly constructed and rehabilitated PBV unit before execution of the HAP contract. Each proposed PBV unit must fully comply with housing quality standards prior to HAP contract execution.
- For rehabilitated housing that will undergo development activity after HAP contract execution, the PHA must conduct unit inspections in accordance with the requirements of 24 CFR 983.157.
- For units that underwent substantial improvement pursuant to 24 CFR 983.207(d) or 983.212, inspect each unit. Each PBV unit that underwent substantial improvement must fully comply with housing quality standards prior to the PHA adding the unit to the HAP contract, returning the unit temporarily removed to the HAP contract, allowing re-occupancy of the unit, and resuming housing assistance payments, as applicable.

Initial Inspection: Existing Housing [24 CFR 983.103(c)]

The PHA must inspect and determine that all of the proposed PBV units fully comply with housing quality standards before entering into the HAP contract, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions (NLT option), or if the unit passed an alternative inspection, or both. The PHA must establish in its administrative plan the amount of time that may elapse between the initial inspection of existing housing and execution of a HAP contract for that unit.

PHA Policy

The PHA will not provide assistance on behalf of the family until the unit fully complies with NSPIRE standards.

The PHA will not rely on alternative inspections for initial inspections.

The HAP contract for existing housing must be executed within 45 calendar days of the initial inspection.

Turnover Inspections [24 CFR 983.103(d)]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE standards.

Periodic Inspections [24 CFR 983.103(e); FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract (or at least triennially for small rural PHAs), the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with housing quality standards. Turnover inspections are not counted toward meeting this inspection requirement.

PHA Policy

The PHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with NSPIRE standards.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

This requirement also applies in the case of a HAP contract that is undergoing development activity after HAP contract execution; however, if the periodic inspection occurs during the period of development activity covered by the rider and fewer than 20 percent of contract units in each building are designated in the rider as available for occupancy, the PHA is only required to inspect the units in that building that are designated as available for occupancy.

Alternative Inspections for Periodic Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

PHA Policy

The PHA will not rely on alternative inspection standards.

Interim Inspections [24 CFR 983.103(f)]

If a participant or government official notifies the PHA of a potential deficiency in a PBV unit or development, the following applies:

- If the reported deficiency is life-threatening, the PHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.
- If the reported deficiency is non-life-threatening, the PHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the PHA or within any PHA-approved extension.

PHA Policy

During an interim inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the periodic inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the PHA may elect to conduct a full inspection.

Follow Up Inspections [24 CFR 983.103(f)(2)]

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected a NSPIRE standards violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violations of NSPIRE standards.

Supervisory Quality Control Inspections [24 CFR 983.103(f)(3)]

In conducting PHA supervisory quality control inspections, the PHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(g)]

In the case of PHA-owned units, the inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA. The PHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the PHA owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151 and 983.152]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance. Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT (AHAP) [24 CFR 983.154]

Except where the PHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced, the PHA and owner must enter into an AHAP that will govern development activity. In the AHAP, the owner agrees to develop the PBV contract units to comply with NSPIRE standards, and the PHA agrees that upon timely completion of development in accordance with the terms of the AHAP, the PHA will enter into a HAP contract with the owner for the contract units. The AHAP must cover a single project, except one AHAP may cover multiple projects that each consist of a single-family building.

The effective date of the AHAP must be on or after the date the AHAP is executed. The AHAP must be executed and effective prior to the commencement of development activity as described in 24 CFR 983.154(d), except where the PHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced. The AHAP must be in the form required by HUD.

The PHA and owner may agree to amend the contents of the AHAP by executing an addendum, so long as such amendments are consistent with all PBV requirements. The PHA and owner may only execute an addendum affecting a unit prior to the PHA accepting the completed unit.

Development activity must not commence after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and before the effective date of the AHAP, except where the PHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced. In the case of new construction, development activity begins with excavation or site preparation (including clearing of the land). Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

PHA Discretion Not to Use an AHAP [24 CFR 983.154(f)]

The PHA may decide not to use an AHAP or may choose to execute an AHAP after construction or rehabilitation that complies with applicable requirements of 24 CFR 983.153 has commenced. To do so, the PHA must explain the circumstances (if any) under which the PHA will enter into a PBV HAP contract for newly constructed or rehabilitated housing without first entering into an AHAP and under which the PHA will enter into an AHAP after construction or rehabilitation has commenced.

PHA Policy

The PHA will not exercise its discretion to not use an AHAP or to execute an AHAP after construction or rehabilitation.

Content of the AHAP [24 CFR 983.154(e)]

At a minimum, the AHAP must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (square footage) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the AHAP. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the AHAP;
- A description of any required work item if the requirement to install broadband infrastructure applies;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the AHAP.
 - For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans.
 - For new construction units, the description must include the working drawings and specifications.
- The deadline for completion of the work to be performed under the AHAP; and
- Any additional requirements for quality, architecture, or design over and above housing quality standards. The PHA must specify the conditions under which it will require additional housing quality requirements in the administrative plan.

Execution of the AHAP [FR Notice 11/24/08]

The AHAP must be executed promptly after PHA notice of proposal selection to the selected owner.

PHA Policy

The PHA will enter into the AHAP with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. DEVELOPMENT REQUIREMENTS

Labor Standards [24 CFR 983.153(c)]

If an AHAP covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing.

Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18-months after execution constitutes project development. Any development initiated on existing units within 18-months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

When the PHA exercises its discretion at 24 CFR 983.154(f) or 983.157(a) to allow the owner to conduct some or all development activity while the proposed PBV units are not under an AHAP or HAP contract, the applicable parties must comply with the labor standards outlined above from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection).

The AHAP will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

For any project to which labor standards apply, the PHA's written notice to the party that submitted the selected proposal or board resolution approving project-basing of assistance at the specific project must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

Development activity is also subject to the federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964-1965 Comp., p. 339), 11625 (3 CFR, 1971-1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

Accessibility [24 CFR 983.153(e)]

As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations at 28 CFR Part 35, including 24 CFR 35.150 and 35.151, apply to development activity.

A description of any required work item resulting from these requirements must be included in the AHAP (if applicable) or HAP contract (if applicable).

Broadband Infrastructure [24 CFR 983.153(f)]

Any development activity that constitutes substantial rehabilitation (as defined by 24 CFR 5.100) of a building with more than four rental units and where the proposal or project selection date or the start of the development activity while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

A description of any required work item resulting from this requirement must be included in the AHAP (if applicable) or HAP contract (if applicable).

Owner Disclosure [24 CFR 983.153(g)]

The AHAP and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the AHAP, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF WORK [24 CFR 983.155]

Evidence of Completion [24 CFR 983.155]

The owner must submit evidence and certify to the PHA, in the form and manner required by the PHA's administrative plan, that development activity or substantial improvement has been completed, and that all such work was completed in accordance with the applicable requirements. The PHA must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

In the case of PHA-owned units, the owner must submit evidence and certify to the independent entity, in the form and manner required by the PHA's administrative plan, that development activity or substantial improvement has been completed, and that all such work was completed in accordance with the applicable requirements. The independent entity must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

PHA Policy

At a minimum, the owner must submit the following evidence of completion to the PHA or independent entity, as applicable:

- Owner certification that the work has been completed in accordance with housing quality standards and all requirements of the AHAP; and

- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the discretion of the PHA, the AHAP may specify additional documentation that must be submitted by the owner as evidence of housing completion. For example, such documentation may include:

- A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and

- An architect's certification that the housing complies with:

- HUD housing quality standards;

- State, local, or other building codes;

- Zoning;

- The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or

- Any additional design or quality requirements pursuant to the AHAP.

The PHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The PHA will specify any additional documentation requirements in the AHAP.

PHA Acceptance of Completed Units [24 CFR 983.156(a) and (b)]

After the PHA has received all required evidence of completion and the owner's certification that all work was completed in accordance with the applicable requirements, the PHA must inspect to determine if the housing has been completed in accordance with the AHAP, including compliance with housing quality standards and any additional design, architecture, or quality requirements imposed under the AHAP. For PHA-owned units, the independent entity must perform the inspection. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the AHAP, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the AHAP and all applicable requirements and that the owner has submitted all required evidence of completion, the PHA must:

- For units which will not undergo development activity after HAP contract execution, submit the HAP contract for execution by the owner and then execute the HAP contract;
- For rehabilitated housing projects for which development activity has commenced prior to HAP contract execution under 24 CFR 983.157(b), submit the HAP contract for execution by the owner and then execute the HAP contract;
- For development activity after the HAP contract execution, amend the HAP contract rider to designate the completed units as available for occupancy, or if the owner has completed all development activity as provided in the rider, amend the HAP contract to delete the rider; or
- For units that underwent substantial improvement in order to be added to the HAP contract, amend the HAP contract to add the units to the HAP contract.

Staged Completion of Contract Units [24 CFR 983.156(c)]

Contract units that will not undergo development activity after HAP contract execution may be placed under the HAP contract in stages commencing on different dates. In such a case, the PHA must determine separately for each stage whether the development activity was completed in accordance with the applicable requirements and that the units meet housing quality standards and any additional design, architecture, or quality requirements specified by the PHA. If the first stage is determined compliant, then the PHA must submit the HAP contract for execution by the owner and must execute the HAP contract for PBV rehabilitated housing and newly constructed housing projects. As each subsequent stage is determined compliant, the PHA and owner must amend the HAP contract to add the units to the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

17-V.A. OVERVIEW [24 CFR 983.202(a)]

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families leasing PBV units during the term of the HAP contract. With some exceptions, a HAP contract must cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. However, a PHA and owner may agree to place multiple projects, each consisting of a single-family building, under one HAP contract. The HAP contract must be in the form required by HUD.

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and ZIP code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8 and the Americans with Disabilities Act, as applicable;
- The HAP contract term;
- The number of units under the increased program cap or excepted from the project cap that will be set aside for occupancy by families who qualify for such a unit;
- The initial rent to owner for the first 12 months of the HAP contract term; and
- Whether the PHA has elected not to reduce rents below the initial rent to owner.

Execution of the HAP Contract [24 CFR 983.204]

Before execution of the HAP contract, the PHA must determine that applicable pre-HAP contract housing quality standards requirements have been met in accordance with 24 CFR 983.103(b) or (c) as applicable. The PHA may not execute the HAP contract for any contract unit that does not meet the pre-HAP contract housing quality standards requirements. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and the PHA determines that applicable pre-HAP contract housing quality standards requirements have been met. For newly constructed or rehabilitated housing that will not undergo development activity after HAP contract execution, the HAP contract must be executed promptly after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the AHAP, and the owner furnishes all required evidence of completion. For rehabilitated housing that will undergo development activity after HAP contract execution, the HAP contract must be executed and effective promptly after all proposed PBV units are added to the contract at this time, including units that do not comply with HQS or that will undergo development activity.

PHA Policy

For existing housing, the HAP contract will be executed within 10 business days of the PHA determining that all units pass inspection.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the PHA determining that the units have been completed in accordance with the AHAP, all units meet housing quality standards, and the owner has submitted all required evidence of completion.

Effective Date of the HAP Contract [24 CFR 983.204(d)]

The effective date of the HAP contract must be on or after the date the HAP contract is executed. The HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family, and the PHA may not pay any housing assistance payment to the owner until the HAP contract is effective.

Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years.

PHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

The PHA and owner may agree at any time before expiration of the HAP contract to execute one or more extensions of the HAP contract term, but the following conditions apply:

- Each extension executed must have a term that does not exceed 20 years;
- At no time may the total remaining term of the HAP contract, with extensions, exceed 40 years;
- Before agreeing to an extension, the PHA must determine that the extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities; and
- Each extension must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

PHA Policy

When determining whether or not to extend an expiring PBV contract, the PHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner's record of compliance with obligations under the HAP contract and leases;

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

17-V.C. TERMINATION OF THE HAP CONTRACT

Termination by Agreement of PHA and Owner [24 CFR 983.206(e)]

The PHA and owner may agree to terminate the HAP contract prior to the end of the term. The owner is required to give notice in accordance 24 CFR 983.206(a) prior to termination, and families must be provided tenant-based assistance and may elect to remain in the project.

Termination by PHA [24 CFR 983.205(c)]

The HAP contract must provide that the PHA may terminate the contract for insufficient funding, subject to HUD requirements. The PHA has the option of terminating a PBV HAP contract based on “insufficient funding” only if:

- The PHA determines in accordance with HUD requirements that it lacks sufficient HAP funding (including HAP reserves) to continue to make housing assistance payments for all voucher units currently under a HAP contract;
- The PHA has taken cost-saving measures specified by HUD;
- The PHA notifies HUD of its determination and provides the information required by HUD; and
- HUD determines that the PHA lacks sufficient funding and notifies the PHA it may terminate HAP contracts as a result.

If the PHA determines that the owner has breached the HAP contract, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. The provisions of 24 CFR 983.208 apply for HAP contract breaches involving failure to comply with housing quality standards. For any other contract termination due to breach, 24 CFR 983.206(b) on provision of tenant-based assistance applies.

Non-extension by Owner – Notice Requirements [24 CFR 983.206(a)]

Not less than one year before the HAP contract terminates, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. The term *termination* for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of PHA and owner, or an owner’s refusal to renew the HAP contract.

If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner’s inability to collect an increased tenant portion of rent. An owner and the PHA may agree to renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Termination by Owner – Reduction Below Initial Contract Rent [24 CFR 983.206(d)]

If the amount of the rent to owner for any contract unit, as adjusted, is reduced below the amount of the initial rent to owner, the owner may terminate the HAP contract, upon notice to the PHA no fewer than 90 calendar days prior to the planned termination, and families must be provided tenant-based assistance and may elect to remain in the project. The owner is not required to provide the one-year notice of the termination of the HAP contract to the family and the PHA when terminating the HAP contract due to rent reduction below the initial rent to owner.

Termination or Expiration without Extensions – Required Provision of Tenant-Based Assistance [24 CFR 983.206(b)]

Unless a termination or expiration without extension occurs due to a determination of insufficient funding or other extraordinary circumstances determined by HUD, upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher no fewer than 60 calendar days prior to the planned termination or expiration of the PBV HAP contract. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (e.g., an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher.

Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance subject to the following:

- The unit must comply with housing quality standards;
- The PHA must determine or have determined that the rent for the unit is reasonable;
- The family must pay its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy does not apply); and

- The owner may not refuse to initially lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the following grounds:
 - The grounds in 24 CFR 982.310, except paragraphs 24 CFR 982.310(d)(1)(iii) and (iv);
 - The owner's desire to use the unit for a purpose other than a residential rental unit; and
 - The owner's desire to renovate the unit, subject to the following:
 - The owner must consider whether a reasonable alternative to terminating the lease exists. If a reasonable alternative exists, the owner must not terminate the lease. The owner must consider the following alternatives:
 - Completing renovations without the family vacating the unit, if the renovations can be completed in a manner that does not result in life-threatening conditions, does not result in deficiencies under housing quality standards that are not corrected within 30 days, and is mutually agreeable to the owner and the family; and
 - Temporarily relocating the family to complete the renovations, if the relocation and renovations can be completed within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month) and the family can be relocated to a location and in a manner mutually agreeable to the owner and the family;
 - If the owner terminates the lease for renovation, the owner must make every reasonable effort to make available and lease the family another unit within the project that meets the tenant-based voucher program requirements; and
 - If no other unit within the project is available for the family to lease during the renovation period or the family chooses to move from the project during the renovation period, the owner must make every reasonable effort to make available and lease the family a unit within the project upon completion of renovations.

The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

The voucher issued to the family is the voucher attached to its unit under the expiring or terminating PBV contract. Consequently, if the family vacates the contract unit following the issuance of the tenant-based voucher and prior to the contract termination or expiration date, the PHA must remove the unit from the PBV HAP contract at the time the family vacates the unit. The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project.

Remedies for Housing Quality Standards Deficiencies [24 CFR 983.208]

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with housing quality standards. If the PHA determines that a contract does not comply with housing quality standards, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

PHA Policy

The PHA will abate and terminate PBV HAP contracts for noncompliance with housing quality standards in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.

Enforcement of Housing Quality Standards [24 CFR 983.208(b)]

The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with housing quality standards. If the owner fails to maintain the dwelling unit in accordance with housing quality standards, the PHA must take enforcement action. The unit is in noncompliance with housing quality standards if:

- The PHA or other inspector authorized by the state or local government determines the unit has housing quality standards deficiencies based upon an inspection;
- The agency or inspector notifies the owner in writing of the unit housing quality standards deficiencies; and
- The deficiencies are not remedied within the following timeframes:
 - For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification;
 - For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable PHA-approved extension).

In the case of a housing quality standards deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the PHA may terminate assistance to a family because of a housing quality standards breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

PHA Policy

The PHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

In the case of a housing quality standards deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the PHA may permit the owner to undertake substantial improvement in accordance with 24 CFR 983.212. However, so long as the contract unit with deficiencies is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

In the case of a project that is undergoing development activity after HAP contract execution, the remedies of 24 CFR 983.208(d) do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

Family Obligation [24 CFR 983.208(c)]

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and
- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

PHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

If the PHA has waived the owner's responsibility to remedy the violation, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

If the family has caused a breach of the housing quality standards, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 24 CFR 982.552.

PHA Remedies [24 CFR 983.208(d)]

The remedies listed below apply when housing quality standards deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection. The PHA must identify in its administrative plan the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the HAP contract for units other than the unit with housing quality standards deficiencies.

PHA Policy

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies housing quality standards failures, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

The PHA will not withhold assistance payments upon notification to the owner of the deficiencies.

When life-threatening conditions are identified, the PHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the PHA's notice.

When failures that are not life-threatening are identified, the PHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

If the owner is responsible for correcting the deficiency, the notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated.

Likewise, if the family is responsible for correcting the deficiency, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

HAP Withholding [24 CFR 983.208(d)(1)]

A PHA may withhold assistance payments for units that have housing quality standards deficiencies once the PHA has notified the owner in writing of the deficiencies. The PHA's administrative plan must identify the conditions under which the PHA will withhold HAP. In this case, if the unit is brought into compliance during the applicable cure period, the PHA resumes assistance payments and provides assistance payments to cover the time period for which the payments were withheld.

PHA Policy

The PHA will not withhold assistance payments upon notification to the owner of the deficiencies.

HAP Abatement [24 CFR 983.208(d)(2)]

The PHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. The PHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the housing quality standards, even if some of the contract units continue to meet housing quality standards. In this case, the PHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days (or a reasonable longer period established by the PHA), the PHA will either terminate the HAP contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with housing quality standards will have to move if the family wishes to receive continued assistance.

The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

PHA Policy

The PHA will make all HAP abatements effective the first of the month following the expiration of the PHA-specified correction period (including any extension).

The PHA will abate payments only for those contract units that do not meet housing quality standards.

The PHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent.

Failure to Make Repairs

If an owner fails to make required repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety. The PHA must issue the family whose unit will be removed or all families residing in contract units, if the PHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain. The PHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated due to a failure to correct housing quality standards deficiencies at least 90 days or a longer period as the PHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

PHA Policy

The PHA will issue a family whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days. No briefing is required for these families.

In order to receive tenant-based assistance under the HCV program, the family must submit a Request for Tenancy Approval and proposed lease within the 120-day period, unless the PHA grants an extension. The PHA will follow the policies set forth in Chapter 5 on voucher extension and expiration.

Offer of Public Housing [24 CFR 983.208(d)(6)(ii)]

If the family is unable to lease a new unit within the term of the voucher, and the PHA owns or operates public housing, the PHA must offer, and, if accepted, provide the family a selection preference for an appropriate-size public housing unit that first becomes available for occupancy after the time period expires.

PHA Policy

The PHA does operate a public housing program and will provide a preference for PBV families whose units are being removed from the HAP contract or whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame, and who were unable to lease a new unit within the term of the voucher.

Thirty days prior to the expiration date of the voucher, the PHA will provide written notice to the family stating that the PHA does provide such a preference and providing an estimation of availability for the appropriately-size public housing unit.

Relocation Assistance [24 CFR 983.208(d)(6)(iii)]

PHAs may assist families relocating due to the HAP contract being terminated as a result of the owner failing to make required repairs within the required time frame in finding a new unit, including using up to two months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the PHA based on their locality.

If the PHA uses withheld and abated payments to assist with relocation costs, the PHA must provide security deposit assistance to the family as necessary. The PHA must assist families with disabilities with locating available accessible units in accordance with 24 CFR 8.28 (a)(3). If the family receives security deposit assistance from the PHA for the new unit, the PHA may require the family to remit the security deposit returned by the owner of the new unit as such time that the lease is terminated, up to the amount of security deposit provided by the PHA for that unit.

PHA Policy

The PHA will assist families with disabilities with locating available accessible units in accordance with program requirements.

The PHA will use up to two months of withheld and abated payment to assist with any required security deposit at the new unit. Funds will not be used for any other relocation assistance.

If the family receives a refund of a security deposit for the new unit, the PHA will not require any amount to be remitted to the PHA.

17-V.D. AMENDMENTS TO THE HAP CONTRACT TO ADD OR SUBSTITUTE UNITS [24 CFR 983.207]

At the PHA's discretion, the PHA and owner may execute an amendment to the HAP contract to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit or to add additional contract units to the existing HAP contract without a new proposal selection.

The proposed substituted or added units may be vacant or occupied (subject to the requirements of 24 CFR 983.207(c) described below). Before any such substitution or addition can take place:

- The units must comply with housing quality standards;
- The rent to owner must be reasonable; and
- One of the following conditions must apply:
 - The units existed at the time of HAP contract execution; or
 - In the case of a project completed in stages, the units existed at the time of PHA acceptance of the last completed units; or
 - A unit, office space, or common area within the interior of a building containing contract units existed at the time described above, as applicable, and is reconfigured without impacting the building envelope, subject to 24 CFR 983.207(d), into one or more units to be added or substituted.

The PHA must describe in the administrative plan the circumstances under which it will add or substitute contract units, and how those circumstances support the goals of the PBV program.

PHA Policy

The PHA will add units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

Addition of Contract Units [24 CFR 983.207(b)]

Before adding any contract units, the units must comply with housing quality standards and the rent to owner must be reasonable. The additional PBV units, however, are still subject to the PBV program cap and project cap. However, added units that qualify for an exclusion from the program cap (as described in 24 CFR 983.59) or an exception to or exclusion from the project cap (as described in 24 FR 983.54(c) and 24 CFR 983.59, respectively) do not count toward such caps.

Substituting or Adding Occupied Units [24 CFR 983.207(c)]

The PHA may place occupied units on the HAP contract subject to the following:

- The family occupying the unit must be eligible for assistance;
- The unit must be the appropriate for the size of the family occupying the unit under the PHA's subsidy standards;
- The family must be selected from the waiting list in accordance with applicable selection policies; and
- The unit may be occupied by a family who was assisted with a tenant-based voucher immediately prior to the unit being placed on the PBV HAP contract. The tenant-based HAP contract for the unit must terminate before the unit may be placed under the PBV HAP contract. The family occupying the unit is not a new admission to the voucher program.
 - If the family is in the initial term of the tenant-based lease, the family agreed to mutually terminate the tenant-based lease with the owner and enter into a PBV lease.
 - If the initial term of the tenant-based lease has passed or the end of that term coincides with the time at which the unit will be placed on the PBV HAP contract, upon the owner's decision not to renew the tenant-based lease or to terminate the tenant-based lease in accordance with 24 CFR 982.308 or 982.310, respectively, the family agreed to relinquish the tenant-based voucher and enter into a PBV lease.

17-V.E. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b)(2) and (g) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.F. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

- The owner is maintaining the premises and contract units in accordance with housing quality standards;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA or selected from the owner-maintained waiting list, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit (unless needed as a reasonable accommodation);
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance using information received and verified by the PHA within a period of 60 days before commencement of PBV assistance. For all families, the PHA must determine the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

PHA Policy

The PHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

In-Place Families [24 CFR 983.251(b)]

A family residing in a proposed contract unit on the proposal or project selection date is considered an *in-place family*. If an in-place family is determined to be eligible prior to placement of the family's unit on the HAP contract, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list). Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer families to the applicable project owner for an appropriately sized PBV unit in the specific project. Admission of eligible in-place families is not subject to income targeting requirements.

During the initial term of the lease under the tenant-based tenancy, an in-place tenant-based voucher family may agree, but is not required, to mutually terminate the lease with the owner and enter into a lease and tenancy under the PBV program. If the family chooses to continue the tenant-based assisted tenancy, the unit may not be added to the PBV HAP contract. The owner may not terminate the lease for other good cause during the initial term unless the owner is terminating the tenancy because of something the family did or failed to do in accordance with 24 CFR 982.310(d)(2). The owner is expressly prohibited from terminating the tenancy during the initial term of the lease based on the family's failure to accept the offer of a new lease or revision, or for a business or economic reason.

If, after the initial term, the owner chooses not to renew the lease or terminates the lease for other good cause (as defined in 24 CFR 982.310(d)) to end the tenant-based assisted tenancy, the family would be required to move with continued tenant-based assistance or relinquish the tenant-based voucher and enter into a new lease to receive PBV assistance in order to remain in the unit.

17-VLC. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the waiting list for the PBV program. The PHA or owner (as applicable) may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list. The PHA must establish in the administrative plan the options it will use to structure the PBV waiting list. The PHA may:

- Use a separate, central, waiting list comprised of more than one or all PBV projects;
- Use the same waiting list for both tenant-based and some or all PBV projects;
- Use a separate waiting list for PBV units in individual projects or buildings (or for sets of such units) (which may be used in combination with either of the above options and may be maintained by the owner); or
- Merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA.

If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance. The PHA must specify the name of the PBV projects in its administrative plan.

PHA Policy

The PHA will use separate, site-based waiting lists for all projects or buildings that are receiving PBV assistance.

While some waiting lists will be maintained by the owner as described below, the PHA will maintain waiting lists for the following PBV projects:

[Insert list of project/buildings receiving PBV assistance for which separate waiting lists are maintained by the PHA].

PHA Waiting List Preferences [24 CFR 983.251(c)(3)]

The PHA may establish in its administrative plan any preferences for occupancy of particular units including the name of the projects and the specific preferences that are to be used by project. Criteria for occupancy of units (e.g., elderly families) may also be established, however, selection of families must be done through admission preference. The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above. For both excepted units and units under the increased program cap, 24 CFR 983.262(b)(2) requires that the PHA must select families from the waiting list through an admission preference for these types of units.

PHA Policy

The PHA will offer waiting list preferences for PHA-maintained waiting lists.

[See the Guide for Chapter 17 and insert information on applicable preferences.]

17-VLD. OWNER-MAINTAINED WAITING LISTS [24 CFR 983.251(c)(7)]

When the PHA uses separate waiting lists for individual projects or buildings, the PHA may establish in the administrative plan that owners will maintain the waiting lists.

All HCV waiting list administration requirements that apply to the PBV program also apply to owner-maintained waiting lists [24 CFR part 982, subpart E, other than 24 CFR 982.201(e), 982.202(b)(2), and 982.204(d)].

Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to:

- Processing changes in applicant information;
- Removing an applicant's name from the waiting list;
- Opening and closing the waiting list;
 - If the owner-maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 CFR 982.206 and the owner waiting list policy.
- Maintaining complete and accurate records as described in 24 CFR 982.158; and
- Giving the PHA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management, as described in 24 CFR 982.158(c).

Applicants already on the PHA's waiting list (including the tenant-based waiting list) must be permitted to place their names on the project's waiting lists.

Applicants may apply directly at the project, or the applicant may request that the PHA refer the applicant to the owner for placement on the project's waiting list. The PHA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.

PHA Policy

The PHA will establish owner-maintained waiting lists at the following PBV projects:

[Insert list of projects for which owners maintain waiting lists.]

The PHA will disclose information to all applicants about all the PBV projects, including the projects' contact information and other basic information such as the location, number of accessible units, types of excepted units (if any), amenities, and anticipated waiting time.

Owner Waiting List Policy [24 CFR 983.251(c)(7)(i)]

The owner must develop and submit to the PHA a written owner waiting list policy that must include:

- Policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences;
- Procedures for removing applicant names from the waiting list; and
- Procedures for closing and reopening the waiting list.

The owner must receive approval from the PHA in accordance with the process established in the PHA's administrative plan, and the PHA must include the owner's waiting list policy in the PHA's administrative plan.

PHA Policy

Prior to any owner initially managing a waiting list, the owner must develop and submit a written owner waiting list policy to the PHA. Owners may not operate a waiting list without prior PHA approval. The PHA will review the owner's policy to ensure that, at a minimum, it includes policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences; procedures for removing applicant names from the waiting list; and procedures for closing and reopening the waiting list. Further, if the owner will maintain waiting list preferences, the owner must also receive written approval from the PHA for any preferences that will be applicable to the project (see Preferences below).

The PHA will not approve any owner waiting list policies that do not meet minimum requirements as described in the regulations and PHA policy. Owner policies must be submitted electronically to the PHA. If, upon review, the PHA is unable to approve the policy, the PHA will send the owner written notice via email specifying the reasons the policy is being disapproved. The owner will have 10 business days to amend and resubmit the policy to the PHA, subject to extensions for good cause, which the owner must request prior to the end of the 10-business day period. The owner must receive final written approval from the PHA prior to maintaining a waiting list. Once an owner's policy is approved, the PHA will email the owner a copy of the approval and will maintain a copy of the approval in the project records. The PHA will also amend its administrative plan to include the name of the project and the owner's waiting list policy. All owner waiting list policies are included at the end of this chapter as Exhibit 17-3.

The owner must submit any changes to the waiting list policy to the PHA in writing electronically 30 days prior to implementing the changes. The PHA will review the proposed changes and will provide the owner with a written approval or denial letter via email. The owner may not implement any changes to the waiting list policy without prior PHA approval. Changes to the owner's policy will be included in the PHA's administrative plan.

Owner-Maintained Waiting List Preferences [24 CFR 983.251(c)(7)(ii)]

For any owner-maintained waiting lists, the owner may not give selection preferences to families without prior PHA approval. The PHA will review and approve owner preferences as part of its owner waiting list policy approval process. All owner preferences must be consistent with the PHA Plan. If applicable, the owner must give an absolute preference to eligible families residing in a proposed PBV contract unit on the date the proposal or project is selected by the PHA (“in-place families”) in accordance with 24 CFR 983.251(b).

If the project offers services for a particular type of disability, the owner’s preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units and may not require families to accept the particular services offered at the project nor require families to provide their own equivalent services if they decline the project’s services. The owner may not grant a preference for persons with specific disabilities. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units. The owner is responsible for notifying the family of any determination that the family is not eligible for a preference.

Preliminary Eligibility Determinations [24 CFR 983.251(c)(7)(vi)]

At the discretion of the PHA, the owner may make preliminary eligibility determinations for purposes of placing the family on the waiting list and preference eligibility determinations. The PHA may choose to make this determination rather than delegating it to the owner.

Once an owner selects the family from the waiting list, the owner refers the family to the PHA who then determines the family’s final program eligibility. The owner may not offer a unit to the family until the PHA determines that the family is eligible for the program.

PHA Policy

The PHA will allow the owner to make preliminary eligibility determinations for purposes of placing the family on the waiting list. The owner must review each completed application received and make a preliminary assessment of the family’s eligibility. Applicants for whom the waiting list is open must be placed on the waiting list unless the owner determines the family to be ineligible. If the owner determines from the information provided that a family is ineligible, the family will not be placed on the waiting list. The owner is responsible for notifying the family and the PHA of the owner’s determination not to place the applicant on the waiting list. In such a case, the owner is responsible for providing notice in accordance with 24 CFR 982.554(a). The owner must give the applicant prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the owner decision and must also state that the applicant may request an informal review by the PHA.

PHA Oversight [24 CFR 983.251(c)(7)(x)]

The PHA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements under 24 CFR 5.105(a). The PHA must identify in the administrative plan the oversight procedures the PHA will use to ensure these requirements are met.

PHA Policy

The PHA will review owner waiting list and waiting list procedures annually. The owner must maintain an electronic waiting list and provide the PHA electronic records upon request. The PHA will review the owner's waiting list policy to ensure the following:

No changes were made to the owner's waiting list policy without prior PHA approval;

Applicants were selected from the waiting list in the proper order, recognizing applicable preferences;

If applicable, when preferences were applied, they were properly documented;

If the owner opens the waiting list, the owner complied with requirements of 24 CFR 982.206;

The owner's waiting list complies with all equal opportunity requirements listed under 24 CFR 5.105(a); and

Families in need of vacant accessible units were identified on the waiting list (as applicable).

The PHA will communicate any deficiencies found during the waiting list review to the owner in writing via email within 10 business days after the PHA completes its review. The owner must provide the PHA with a written response detailing how deficiencies were remedied within 30 calendar days of the PHA's email notification.

By signing the HAP contract, the owner certifies that at all times during the term of the HAP contract, each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family selected from the owner-maintained waiting list. Serious noncompliance identified by the PHA may result in the owner losing the ability to maintain the waiting list. If the PHA determines that the owner has breached the HAP contract, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination.

17-VLE. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Income Targeting [24 CFR 983.251(c)(9)]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list (including owner-maintained PBV waiting lists) must be extremely low-income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(9)]

Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features. The PHA must have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment.

17-VLF. OFFER OF PBV ASSISTANCE OR OWNER'S REJECTION

Refusal of Offer [24 CFR 983.251(e)]

If a family refuses the PHA's offer of PBV assistance or the owner rejects a family for admission, the family's position on the PHA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by the PHA. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

- If a central PBV waiting list is used, the PHA's administrative plan must address the number of offers a family may reject without good cause before the family is removed from the PBV waiting list and whether the owner's rejection will impact the family's place on the PBV waiting list.
- If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.
- The PHA must define *good cause* in its administrative plan. The PHA's definition of *good cause* must include, at minimum, that:
 - The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
 - The unit has housing quality standards deficiencies;
 - The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and
 - The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

PHA Policy

The PHA will define *good cause* for rejection of a unit offer as any of the factors listed above.

The PHA must not take any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
 - The PHA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.
- Deny any admission preference for which the applicant is currently qualified;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection from the waiting list;
- Remove the applicant from the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252(a) and (b)]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works, the responsibilities of the family and owner, and the family's right to move.

In addition to the oral briefing, the PHA must provide a briefing packet that contains the following information:

- How the PHA determines the total tenant payment for a family;
- The family obligations under the program;
- Information on federal, state, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;
- PHA subsidy standards, including when the PHA will consider granting exceptions to the standards, and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and
- The family's right to move.

The PHA and family must sign the statement of family responsibility.

Persons with Disabilities

The PHA must take appropriate steps to ensure effective communication, in accordance with 24 CFR 8.6 and 28 CFR Part 35, subpart E, and must provide information on the reasonable accommodation process in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency [24 CFR 983.252(d)]

The PHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964, HUD's implementing regulation at 24 CFR Part 1, Executive Order 13166 (see Chapter 2), and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority.

17-VLG. LEASING OF CONTRACT UNITS [24 CFR 983.252]

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)]. The owner must provide a copy of the rejection notice to the PHA. During the term of the HAP contract, the owner must lease contract units to eligible families that are selected from the waiting list for the PBV program. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The PHA and the owner must make reasonable, good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy are not subject to this requirement.

If an owner-maintained waiting list is used, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit and refer the family to the PHA for final eligibility determination. The PHA must make every reasonable effort to make such final eligibility determination within 30 calendar days.

If a PHA-maintained waiting list is used, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days.

PHA Policy

For units where the waiting list is owner-maintained, the owner must notify the PHA in writing via email within five business days of learning about any vacancy or expected vacancy.

The owner is responsible for notifying the family of their selection from the waiting list. The PHA will make every reasonable effort to notify the owner in writing via email of the PHA's eligibility determination within 30 calendar days of receiving such notice from the owner. If the family is determined eligible, the PHA will notify the family and refer them back to the owner for a suitability screening. If the owner rejects the family after conducting a suitability screening, the owner must provide a copy of the rejection notice to the PHA. The owner may not offer a unit to a family until the PHA determines that the family is eligible for the program and has given the owner written confirmation.

For units where the waiting list is PHA-maintained, the owner must notify the PHA in writing via email within five business days of learning about any vacancy or expected vacancy. The PHA will refer families determined eligible to the owner for a suitability determination within 30 calendar days of receiving such notice from the owner. If the owner rejects the family after conducting a suitability screening, the owner must provide a copy of the rejection notice to the PHA. The owner may not offer a unit to a family until the PHA determines that the family is eligible for the program and has given the owner written confirmation.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, and notwithstanding the reasonable good-faith efforts of the PHA and the owner to fill such vacancies, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

PHA Policy

If any contract units have been vacant for 120 days, the PHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The PHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy.

The amendment to the HAP contract will be effective the 1st day of the month following the date of the PHA's notice.

17-VLH. TENANT SCREENING [24 CFR 983.255]

PHA Option

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

PHA Policy

The PHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking in 24 CFR part 5, subpart L, apply to tenant screening. The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(a)(4)].

PHA Policy

The PHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the turnover inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 983.256(a)].

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

PHA Policy

The PHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f)]

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose. The regulations at 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 CFR Part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

In addition, the owner may terminate the tenancy in accordance with the requirements related to lease terminations for development activity on units under a HAP contract and for substantial improvement to units under a HAP contract.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family’s other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

PHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

PHA Policy

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and within 60 days of the determination, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 60 days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in an appropriately sized unit in the same building or project;

PBV assistance an appropriately sized unit in in another project; and

Tenant-based voucher assistance.

If no continued housing assistance is available, the PHA must remove the wrong-sized or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

- The PHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days); or
- The PHA has offered other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days).

In either of the above situations, the family may request, and the PHA may grant, one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

The PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when the PHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA (not to exceed 90 days). No extensions may be granted in this case. The PHA may reinstate a removed unit to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 90 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 90-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 90-day period.

Except in the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out, the PHA may make exceptions to this 90-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member or to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing. The family must make such a request in writing prior to the end of the 90-day period. The PHA will only grant one extension which will not exceed an additional 90 days.

Family Right to Move [24 CFR 983.261]

The family may terminate the lease at any time after one year of PBV assistance. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease. The right to request a move with tenant-based assistance does not expire, and the family may request a move at any time after the one-year period has expired.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. The PHA must specify in the administrative plan whether it will offer families assistance under the voucher program or other comparable tenant-based rental assistance. If voucher assistance is offered to the family and the search term expires, the PHA must issue the voucher to the next eligible family before issuing another voucher to the family that requested to move. If voucher or other comparable tenant-based assistance is not immediately available upon the family's request to the PHA, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance. The PHA must describe in its Administrative Plan its policies and procedures for how the family must contact the PHA and how the PHA documents families waiting for continued tenant-based rental assistance.

If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance.

PHA Policy

Except for families seeking protection under VAWA as described below, prior to providing notice to the owner to terminate the lease, any eligible family may submit a written request to the PHA for a voucher at any time after completing the 12-month occupancy requirement. The PHA will process the request within 10 business days of receiving the family's request. The PHA will verify that the family has met the 12-month occupancy requirement. No additional screening will be performed.

If the request is approved by the PHA, the family will receive the next available tenant-based voucher.

If a tenant-based voucher is not immediately available, the PHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to move after one year of PBV assistance. A RAD resident does not have priority for tenant-based assistance over a non-RAD PBV resident and vice versa. The list will be maintained separately from the tenant-based HCV list. Families on this list will be given priority over families on the tenant-based waiting list. The list will be organized by date and time of the family's written request. The list will also identify whether families live in standard or RAD PBV units. Once a family is placed on the list, the PHA will send the family an acknowledgement of receipt of their request and successful placement on the list. If a family requests a tenant-based voucher and then is unable or unwilling to move once the PHA offers the family a tenant-based voucher, the family's name will be removed from the list. The family may resubmit a new request to move at any time.

While the family will not be required to attend a standard HCV briefing in order to receive a voucher, the PHA will promptly schedule a meeting with each family at the time of voucher issuance.

Families exercising their right to move are not required to vacate their units before a lease has been entered into using their tenant-based voucher so long as the resident has not yet provided notice to vacate to the owner. At the time the PHA issues the tenant-based voucher, the PHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher. If family's search term (and any extensions) expires, the PHA must issue the voucher to the next eligible family. The family's name will be removed from the priority list, and the family will be able to resubmit a request at a later time.

Emergency Transfers under VAWA [Notice PIH 2017-08 and 24 CFR 983.261(f) and (g)]

In the case of a move due to domestic violence, dating violence, sexual assault, stalking, or human trafficking, PHAs must describe policies for facilitating emergency transfers for families with PBV assistance in their Emergency Transfer Plan, including when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

When the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member, the family is not required to give the owner advance written notice or contact the PHA before moving from the unit. Additionally, when any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move, the family is not required to give the owner advance written notice or contact the PHA before moving from the unit. A PHA may not terminate the assistance of a family due to a move occurring under these circumstances and must offer the family the opportunity for continued tenant-based assistance if the family had received at least one year of PBV assistance prior to moving.

If a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, stalking or human trafficking, the PHA must ensure that the victim retains assistance.

PHA Policy

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may request an external emergency transfer to the PHA's public housing program for which they are required to apply. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW [24 CFR 983.301(a)]

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the AHAP states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

17-VIII.B. AMOUNT OF RENT TO OWNER [24 CFR 983.301(b)]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA in accordance with the administrative plan not to exceed 110 percent of the applicable fair market rent (or amount of any applicable exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Rent to Owner for Certain Tax Credit Units [24 CFR 983.301(c)]

For certain tax credit units, the rent limits are determined differently than for other PBV units. Tax credit units that do not meet the criteria below will have their rents determined by the PHA pursuant to 24 CFR 983.301(b) as stated above.

Rents are set differently in contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- In the same building, there are comparable tax credit units of the same bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent (or any exception payment standard) as determined in 24 CFR 983.301(b);

For contract units that meet these criteria, the rent to owner must not exceed the lowest of:

- An amount determined by the PHA in accordance with the administrative plan, not to exceed the tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

The *tax credit rent* is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., additional assistance such as tenant-based voucher assistance).

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

For PBV projects that are not located in a designated SAFMR area or located in a ZIP code where the PHA has opted in to SAFMRs, any exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

For PBV projects that are located in a designated SAFMR area or located in a ZIP code where the PHA has opted in to SAFMRs, an exception payment standard amount under the tenant-based voucher program applies when setting rents under 24 CFR 983.301(b)(1) for PBV units and 983.301(c)(1)(iv) for certain tax credit units only if the PHA has adopted a policy applying SAFMRs to its PBV program and met all other requirements in 24 CFR 888.113(h), which are described below.

The PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

PHA Policy

Upon written request by the owner, the PHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The PHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the PHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the PHA determines it is necessary due to PHA budgetary constraints.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h) and 24 CFR 983.301(f)(3)]

Unless one of the following exceptions apply, SAFMRs do not apply to PBV projects regardless of whether HUD designates the metropolitan area or the PHA notifies HUD and implements the SAFMRs under paragraph 883.113(c)(3).

- Where the proposal or project selection date was on or before the effective dates of either or both the SAFMR designation/implementation and the PHA administrative policy, the PHA and owner may mutually agree to apply the SAFMR. The application of the SAFMRs must be prospective and consistent with the PHA administrative plan. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide or county-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the SAFMRs to the PBV project, the rent increase must not be effective until the next annual anniversary of the HAP contract.
- Where the proposal or project selection date was after the effective dates of both the SAFMR designation/implementation and the PHA administrative policy, the SAFMR must apply to the PBV project if the PHA administrative plan provides that SAFMRs are used for all future PBV projects. If the PHA chooses to implement this administrative policy, the SAFMRs must apply to all future PBV projects located within the same metropolitan area or non-metropolitan county where the SAFMRs are in effect for the PHA's HCV program. An owner and the PHA may not subsequently choose to apply the metropolitan area or county FMR to the project, regardless of whether the PHA subsequently changes its administrative plan to revert to the use of metropolitan-wide or county-wide FMR for future PBV projects.

For purposes of this section, the term *effective date of the Small Area FMR designation* means:

- The date that HUD designated a metropolitan area as a SAFMR area; or
- The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

For purposes of this section, the term *effective date of the PHA administrative policy* means the date the administrative policy was formally adopted as part of the PHA administrative plan by the PHA Board of Commissioners or other authorized PHA officials.

PHA Policy

The PHA will not apply SAFMRs to the PHA's PBV program.

17-VIII.C. REDETERMINATION OF RENT TO OWNER [24 CFR 983.302]

The PHA must redetermine the rent to owner:

- When there is a 10 percent or greater decrease in the published FMR;
- Upon the owner's request consistent with requirements established in the PHA's administrative plan; or
- At the time of the automatic adjustment by an operating cost adjustment factor (OCAF) in accordance with 24 CFR 983.302(b)(3).

Adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

Rent Increase [24 CFR 983.302(b)]

During the term of the HAP contract, any increase in rent to owner is effective on the annual anniversary of the HAP contract. A rent increase may occur either through automatic adjustment by an OCAF or as the result of an owner request for a rent increase. The owner does not need to request a rent adjust when a rent increase occurs through an OCAF since the PHA redetermines the rent automatically under that option.

OCAF [24 CFR 983.302(b)(3)]

If the PHA and owner agree, the HAP contract may provide for rent adjustments using an OCAF established by the HUD pursuant to Section 524(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) at each annual anniversary of the HAP contract and published annually in the *Federal Register*. Further, the HAP contract may require an additional increase up to an amount determined by the PHA (pursuant to 24 CFR 983.301(b) and (c)) if requested by the owner in writing, periodically during the term of the contract. The HAP contract must require an additional increase up to an amount determined by the PHA at the point of contract extension, pursuant to 24 CFR 983.301(b) and (c), if requested by the owner in writing.

PHA Policy

The PHA will allow for rent increases by OCAF rather than owner request on a case-by-case basis, including allowing for additional increases up to an amount determined by the PHA pursuant to 24 CFR 983.301(b) and (c) if requested by the owner in writing. An owner's request must be submitted to the PHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

When the PHA allows for rent increases by OCAF, at the point of contract extension, the contract will require an additional increase up to an amount determined by the PHA if requested by the owner in writing. An owner's request must be submitted to the PHA 60 days prior to the anniversary date of the contract extension date and must include the new rent amount the owner is proposing.

Owner-Requested Rent Increases [24 CFR 983.302(b)(4)]

If the HAP contract does not provide for automatic adjustment by an OCAF, and if an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.E.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs). The administrative plan must specify any advance notice the owner must give the PHA and the form the request must take.

PHA Policy

An owner's request for a rent increase must be submitted to the PHA in writing (or via email) 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The PHA may not approve, and the owner may not receive any increase of rent to owner, until and unless the owner has complied with requirements of the HAP contract, including compliance with housing quality standards, except that housing quality standards compliance is not required for units undergoing development activity that complies with 24 CFR 983.157 or substantial improvement that complies with 24 CFR 983.212. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease [24 CFR 983.302(c)]

If the HAP contract does not provide for adjustment by an OCAF and there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

If the HAP contract provides for rent adjustments by an OCAF and there is a decrease in the fair market rent, tax credit rent, or reasonable rent that requires a decrease to the rent to owner, the rent to owner must be decreased.

However, at any time during the term of the HAP contract, the PHA may elect within the HAP contract to not reduce rents below the initial rent to owner. Where a PHA makes such an election, the rent to owner shall not be reduced below the initial rent to owner, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

Notice of Rent Change to Owner [24 CFR 983.203(d)]

Whenever there is a change in rent to owner, the PHA must provide written notice to the owner specifying the amount of the new rent to owner. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

PHA Policy

The PHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

PHA-Owned Units [24 CFR 983.301(g)]

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

17-VIII.D. REASONABLE RENT [24 CFR 983.301(d) and 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

When Rent Reasonable Determinations Are Required

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to add a contract unit or substitute a different contract unit in the same building or project;
- The PHA accepts a completed unit after development activity that is conducted after HAP contract execution in accordance with 24 CFR 983.156(b)(3); and
- There is any other change that may substantially affect the reasonable rent.

The PHA must determine reasonable rent in accordance with 24 CFR 983.303.

Rent Floor

The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner, and upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55; and
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant.

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

PHA Policy

The PHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of the circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the PHA will use the higher initial rent to owner amount.

How to Determine Reasonable Rent [24 CFR 983.303(c)]

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner. The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

***Comparability Analysis* [24 CFR 983.303(d)]**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

PHA-Owned Units [24 CFR 983.303(f)]

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA.

Owner Certification of Reasonable Rent [24 CFR 983.303(e)]

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.E. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with housing quality standards and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

Payment at Move-Out Month [24 CFR 983.352(a)]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

PHA Policy

If the PHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the PHA will notify the owner of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The PHA must include in its administrative plan the PHA's policy on the conditions under which it will allow vacancy payments in a HAP contract, the duration of the payments, amount of vacancy payments it will make to an owner, and the required form and manner of requests for vacancy payments.

PHA Policy

The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge and belief);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

The vacancy payment to the owner for each month of the maximum two-month period is determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 17-VI.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made in writing (including via email) within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

If vacancy payments are made, the PHA will make vacancy payments for the period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will not exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment will cover only the period the unit remains vacant.

17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements [24 CFR 983.353(d)]

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

PHA Policy

The PHA will make utility reimbursements to the family.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

17-IX.E. PROJECT RECORD RETENTION [24 CFR 983.12]

The regulation at 24 CFR 982.158 applies to both the PHA's tenant-based and project-based programs. In addition, for each PBV project, the PHA must maintain the following records throughout the HAP contract term and for three years thereafter:

- Records to document the basis for PHA selection of the proposal, if selection is competitive, or project, if selection is noncompetitive, including records of the PHA's site selection determination (see 24 CFR 983.55) and records to document the completion of the review of the selection process in the case of PHA-owned units, and copies of the written notice of proposal selection and response of the appropriate party;
- The analysis of impact, if applicable;
- The subsidy layering determination, if applicable;
- The environmental review record, if applicable;
- The Agreement to enter into HAP contract (AHAP), if applicable;
- Evidence of completion, if applicable;
- The HAP contract and any rider and/or amendments, including amendments to extend the term of the contract;
- Records to document the basis for PHA determination and redetermination of rent to owner;
- Records to document HUD approval of the independent entity or entities, in the case of PHA-owned units;
- Records of the accessibility features of the project and each contract unit; and
- Other records as HUD may require.



EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

(Fill out one for each development)

DEVELOPMENT INFORMATION

Development Name: [Insert name of PBV development]

Address: [Insert full address of PBV development]

Owner Information: [Insert PBV development owner name and contact information. If development is PHA-owned, enter “PHA-owned.”]

Property Management Company: [Insert property management company name and contact information, or enter “None”]

PHA-Owned: [Enter “Yes” or “No.” If yes, enter name of independent entity]

Mixed Finance Development: [Enter “Yes” or “No.” If yes, list other types of funding (i.e., LIHTC, HOME, etc.) and units to which other funding applies.]

HAP CONTRACT

Effective Date of Contract: [Enter start date of HAP contract]

HOTMA Requirements: [If HAP contract was signed prior to April 18, 2017, enter “Pre-HOTMA.” If HAP contract was signed on or after April 18, 2017, enter “Post-HOTMA.”]

Term of HAP Contract: [Enter term from HAP contract]

Expiration Date of Contract: [Enter expiration date from HAP contract]

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units							
Initial Contract Rent	\$	\$	\$	\$	\$	\$	

Structure Type: [Identify the structure type, i.e. Single Family Detached, Duplex or Two Family, Row House or Town House, Low Rise (3,4 Stories, including Garden Apartment), Highrise (5 or more stories)]

Housing Type: [Identify if the units are an Independent Group Residence or Single Room Occupancy]

UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Electric	Tenant	Owner
Cooking	Electric	Tenant	Owner
Water Heating	Electric	Tenant	Owner
Other Electric		Tenant	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Owner
Refrigerator			
Range/Microwave			
Other (specify)			

Accessible Units and Features: [Identify which units are accessible and describe accessibility features or enter “None”]

Target Population: [Describe targeted population in accordance with HAP contract or enter “None”]

Excepted Units: [Identify excepted unit types below or enter “None”]

- **Supportive Services:** [Enter “Yes, see Exhibit D of HAP Contract” or enter “No”]
- **Elderly Units:** [Enter “Yes” or “No.” If yes, identify which units are elderly units.]
- **Disabled Units** (only for HAP contracts executed prior to April 18, 2017) [Enter “Yes” or “No.” If yes, identify which units are for persons with disabilities.]
- **FUPY/FYI Units:** [Enter “Yes” or “No.” If yes, identify which units are FUP units]
- **Are units excepted because they are located in a low-poverty census tract area?:** [Enter “Yes” or “No”]

WAITING LIST AND SELECTION

Waiting List Type: [Enter “Site-based waiting list,” “Combined with HCV,” “Waiting list for entire PBV program,” or “Merged with another assisted housing program”]

Preferences: [Enter “Same as HCV; see Chapter 4” or describe preferences offered. If different from HCV, also note in Section 17.1.B of this policy.]

Preference Verification: [Enter “Same as HCV; see Chapter 7” or describe for each preference listed above. If different from HCV, note in Section 17.1.B of this policy.]

For the PBV program, is the income limit the same as the HCV program? (Note: In mixed finance developments, other income limits may also apply.) [Enter “Same as HCV; see Chapter 3” or clearly describe. If different from HCV, note in Section 17.1.B of this policy.]

OCCUPANCY

Subsidy Standards: [Enter “Same as HCV; see Chapter 5” or describe. If different from HCV, note in Section 17.1.B of this policy]

Vacancy Payments: [Enter in accordance with HAP contract Part 1, e, 2 and Section 17-V.F. within this chapter]

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EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units

[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family's unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

RAD Requirements Applicable to Non-RAD units in the Project

Alternative Requirement under RAD as Listed in Notice PIH 2019-23	Standard PBV Policy That Does Not Apply	Applicable Policy in Chapter 18
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements.	18-II.F. SITE SELECTION STANDARDS

1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VII.C. UTILITY ALLOWANCES
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. Phase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. PHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18.	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents. New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in administrative plan.	No corresponding policy.

1.6.C.9. When Total Tenant Payment Exceeds Gross Rent	Alternative requirements under RAD for in-place residents. New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	18-VI.B. LEASE, Continuation of Housing Assistance Payments
1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents. New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list. Once waiting list is established, follow 17-VI.E. SELECTION FROM THE WAITING LIST	18-V.D. ORGANIZATION OF THE WAITING LIST
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

EXHIBIT 17-3: Owner Waiting List Policy

(On the pages that follow)