

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ADOPTING THE REVISIONS TO THE CITY OF MESQUITE HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN; AND DECLARING AN EFFECTIVE DATE OF OCTOBER 1, 2018.

WHEREAS, the City Council of the City of Mesquite, Texas (the "City"), has authorized participation in the Housing Choice Voucher of the U.S. Housing Act of 1937, as amended; and

WHEREAS, in accordance with CFR 982.54, the City must adopt a written administrative plan that establishes local policies for administration of the program in accordance with U. S. Department of Housing and Urban Development ("HUD") requirements; and

WHEREAS, the administrative plan and any revisions must be adopted by the City Council; and

WHEREAS, the City Council adopted revisions to the City's administrative plan in September 2017 and HUD has since revised its regulations and requirements; and

WHEREAS, HUD requires that the City's administrative plan be revised to comport with HUD regulations and requirements amended since September 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the revisions to the Housing Choice Voucher Administrative Plan, more fully described in Exhibit "A" attached hereto and made part of hereof, are hereby adopted.

SECTION 2. That the effective date of the Plan shall be October 1, 2018.


DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 1st day of October, 2018.

\_\_\_\_\_  
Stan Pickett  
Mayor

ATTEST:

APPROVED:

\_\_\_\_\_  
Sonja Land  
City Secretary

  
\_\_\_\_\_  
Paula Anderson  
Interim City Attorney

# EXHIBIT "A"

CHAPTER	CURRENT LANGUAGE	REQUIRED LANGUAGE UPATE	CFR Reference/PIH Notice
Page 1-1	Jurisdiction The jurisdiction of the City of Mesquite's HCV program includes the city limits of Mesquite and twenty-five (25) miles outside the city limits.	The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the City of Mesquite Housing and Community Services Department, known hereafter as the Housing Division for the jurisdiction of the City of Mesquite's HCV program includes the city limits of Mesquite and twenty-five (25) miles outside the city limits.	CFR Reference/PIH Notice Housing Division preference
Page 1-5	Violence Against Women Reauthorization Act of 2005 (VAWA)	Violence Against Women Reauthorization Act of 2013 (VAWA)	24 CFR 5.2005(B)
Page 1-5	HUD Equal Access Rule	The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the Federal Register February 3, 2012 and further clarified in Notice PIH 2014-20	PIH NOTICE 2014-20
Page 1-6		Add CFR 982.304 regarding how to file a discrimination complaint	CFR 982.304
Page 1-6	blank	A record of all complaints, investigations, notices, and corrective action will be kept by Fair Housing Administrator [Notice PIH 2014-20]	PIH NOTICE 2014-20
Page 1-6	blank	Housing Division will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/2012]	FR NOTICE 02/03/12
Page 1-6	blank	Discrimination Complaints If an applicant or participant believes that any family member has been discriminated against by the Housing Division or an owner, the family should advise the Housing Division. HUD requires the Housing Division to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the Housing Division is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304]. • Upon receipt of a housing discrimination complaint, the Housing Division is required to: • Provide written notice of the complaint to those alleged and inform the complainant that such notice was made • Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted • Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20] PHA Policy Applicants or participants who believe that they have been subject to unlawful discrimination may notify the Housing Division either orally or in writing. Within 10 business days of receiving the complaint, the Housing Division will provide a written notice to those alleged to have violated the rule. The Housing Division will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO). The Housing Division will attempt to remedy discrimination complaints made against the Housing Division and will conduct an investigation into all allegations of discrimination. Within 10 business days following the conclusion of the Housing Division's investigation, the Housing Division will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.	24 CFR 982.304
Page 1-7		2-III.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26]	PIH NOTICE 2010-26
Page 1-10		Definition of a Person with a Disability Under Federal Civil Rights Law [24 CFR PARTS 8.3 and 100.201]	24 CFR PART 8.3 AND 100.201

Page 2-5		In the absence of a judicial decision or an agreement among the original family members, Housing Division will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, Housing Division will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals.	<b>24 CFR 982.315</b>
Page 2-10		For purposes of student eligibility restrictions, the definition of parents includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).	<b>24 CFR 5.612 and FR Notice 4/10/06, FR Notice 9/21/16]</b> <b>Section 327 of Public Law 109-115</b>
2-4;GL-14		<p>A vulnerable youth is an individual who meets the U.S. Department of Education's definition of independent student in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16 :</p> <p>The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older</p> <p>The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence</p> <p>The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:</p> <p>A local educational agency homeless liaison</p> <p>The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director</p> <p>A financial aid administrator</p>	<b>Section II of FR Notice 9/21/16</b>

	<p>Be at least 24 years old by December 31 of the award year for which aid is sought</p> <p>o Be a ward of the court through the age of 18</p> <p>o Be a veteran of the U.S. Armed Forces</p> <p>o Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)</p> <p>o Be a graduate or professional student</p> <p>o Be married</p> <p>☑ The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.</p> <p>☑ The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided. The Housing Division will verify that a student meets the above criteria</p>	<p>The individual is at least 24 years old by December 31 of the award year for which aid is sought</p> <p>The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older</p> <p>The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence</p> <p>The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes</p> <p>The individual is a graduate or professional student</p> <p>The individual is married</p> <p>The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:</p> <p>A local educational agency homeless liaison</p> <p>The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director</p> <p>A financial aid administrator</p> <p>The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances</p> <p>The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most</p>	CONT'D
Page 2-11	In determining reasonable cause, the Housing Division will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest.	In determining reasonable cause, Housing Division will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. Housing Division will also consider evidence from treatment providers or community-based organizations providing services to household members.	24 CFR 982.553(A)
page 2-11	Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing	if any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied assistance	24 CFR 982.553(A)

page 2-11/12		<p>For any student who is subject to the 5.612 restrictions, the Housing Division will: Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program Determine whether the student is independent from his/her parents in accordance with the definition of independent student in this section Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program If the Housing Division determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the Housing Division will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.</p>	24 CFR 5.612
page 2-13	Any family member has been evicted from federally-assisted housing	Any family member has been evicted from federally-assisted housing in the last five years	982.314(E)(2)
Page 2-13	The family owes rent or other amounts to any Housing Division in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list	The family owes rent or other amounts to the Housing Division in connection with HCV Program or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.	24 CFR 982.552©
2-14 K.		Housing Division will use the Dru Sjodin National Sex Offender database to screen applicants for admission.	PIH NOTICE 2012-28
page 2-15	If the family includes a person with disabilities, the Housing Division decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.	Housing Division's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)]. When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request an informal review hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review hearing process. When a participant family's assistance is terminated, the notice of termination must inform them of Housing Division's informal hearing process and their right to request a hearing and reasonable accommodation. When reviewing reasonable accommodation requests, Housing Division must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to Housing Division's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, Housing Division must make the accommodation.	Section 327 of Public Law 109-115
page 2-16	If the Housing Division uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the Housing Division can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The Housing Division must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].	If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the Housing Division will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the Housing Division to dispute the information within that 10-day period, the Housing Division will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.	24 CFR 4, SUBPART J; 24 CFR 5.903 (F); 5.905(D)

page 2-18	The Housing Division acknowledges that a victim of domestic violence, dating violence, sexual assault or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the Housing Division's policies. Therefore, if the Housing Division makes a determination to deny assistance to an applicant family, the Housing Division will include in its notice of denial the VAWA information including a copy of the form HUD-50066. The Housing Division will request in writing that an applicant wishing to claim protection under VAWA notify the Housing Division within 10 business days	Housing Division acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the Housing Division's policies. Therefore, if the Housing Division makes a determination to deny admission to an applicant family, the Housing Division will include in its notice of denial the VAWA information described in section 12- IX.C of this plan as well as including a copy of the form HUD-5382. The Housing Division will request in writing that an applicant wishing to claim protection under VAWA notify the Housing Division within 14 business days	24 CFR 5.2005 (B)
page 3-6	If a notification letter is returned to the Housing Division, with no forwarding address, the family will be removed from the waiting list. No further notice will be issued to the family	If the notice is returned by the post office with no forwarding address, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.  Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The Housing Division will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without the Housing Division's approval, will be denied assistance (see Chapter 4 Initial Briefing)	24 CFR 982.301
page 3-26		In making its decision to deny assistance, the Housing Division will consider the factors discussed in Section 2-I. Upon consideration of such factors, the Housing Division may, on a <u>case-by-case basis, decide not to deny assistance</u>	24 CFR 982.553(c)
page 4-2	-Persons of the opposite sex (other than spouses, children age 7 or under or a single		[24 CFR 982.402]
page 4-6	Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking "Is Fraud Worth It?" (form HUD-1141-OIG) and "What You Should Know about EIV," a guide to Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19	Information on how to fill out and file a housing discrimination complaint form The form HUD-5380 domestic violence certification form and the form HUD 5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12	PIH Notice 2017-12
Page 5-21		The Housing Division will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:  Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year, or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of independent student (see Section 3-II.E)  Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of independent student (see	24.CFR 5.612

PAGE 5-24	The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses.	the most current IRS Publication 502, Medical and Dental Expenses, will be used as a reference to determine the costs that qualify as medical expenses and provides a chart that summarizes the expenses.	24 CFR 5.611(a)(3)(i) and 5.603(b)
page 5-31	parent/guardian with a child age 7 or under will be allocated separate bedrooms.	Adults of different generations will not be allocated a separate bedroom from other family members. For subsidy standard purposes, different generations are defined as family members from different eras. For example, grandparents/ parent; parents/children/ etc.	Housing Division preference
Page 8-5	<p>Walls: In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged on interior walls, it must be repaired or replaced. Severe cracking or exterior perimeter walls must be repaired or replaced (due to water, air or vermin infiltration).</p> <p>Windows: Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced. Windows must be weather-stripped as needed to ensure a weather-tight seal. Window screens must be in good condition (applies only if screens are present).</p> <p>Floors: All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced. All floors must be in a finished state. Raw wood or unsealed concrete is not permitted. All floors should have some type of baseboard, trim, or sealing to the wall.</p> <p>Sinks/Commodes: All sinks and commode water lines must have shut off valves, unless faucets are wall mounted. All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.</p> <p>Security: If window security bars or security screens are present on emergency exit window, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system prior to or at move-in. Window locks must be permanently attached to window sash or surrounding opening. Thumb locks are not considered permanent locking devices unless they are attached to the</p>	<p>Doors All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold. All interior doors must have no holes, have all trim intact, and be openable without the use of a key.</p> <p>Floors All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced. All floors must be in a finished state. Raw wood or unsealed concrete is not permitted. All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.</p> <p>Sinks All sinks and commode water lines must have shut off valves, unless faucets are wall mounted. All sinks must have functioning stoppers.</p> <p>Toilets All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.</p> <p>Security If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.</p>	Local codes and 982.401(a)(41)
Page 6-1	The Housing Division will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. <u>A. HUD's Verification Hierarchy [Notice PIH 2010-19]</u>	The Housing Division will follow the verification guidance provided by HUD in Notice PIH 2017-12 and any subsequent guidance issued by HUD. <u>A. HUD's Verification Hierarchy [Notice PIH 2017-12]</u>	PIH Notice 2017-12
Page 6-3	Housing Authorities are required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2010-3].	PHAs are required to use EIV's Identity Verification Report on a monthly basis to improve the availability of income information in EIV [Notice PIH 2017-12].	PIH Notice 2017-12
Page 6-5	When Third-Party Verification is Not Required [Notice PIH 2010-19]	When Third-Party Information is Not Required [Notice PIH 2017-12]	PIH Notice 2017-12
Page 6-8	Copy of the receipts and/or payment stubs for the 60 days prior to the Housing Division request	Copy of the receipts and/or payment stubs for previous 12 months prior to the Housing Division request	CFR 982.516
Page 8-1		The PHA will not charge a fee for failed reinspections.	PIH Notice 2016-05

Page 8-2	For major repairs, the Manager of Housing and/or a designee may approve an extension beyond 30 days	For major repairs, the Administrator of Housing and/or a designee may approve an extension beyond 30 days	Housing Division preference
Page 8-2	If the time period given by the inspector to correct the repairs has elapsed, or the maximum number of failed inspections has occurred, the family must select another unit. Following any failed inspection, the family or owner may choose to cancel the RFTA and the family may continue their search for a new unit.	If the time period for correcting the deficiencies (or any Housing Division approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the Housing Division will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The Housing Division may agree to conduct a second reinspection, for good cause, at the request of the family and owner. Following a failed reinspection, the family may submit a new Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.	
Page 8-4	If the inspector observes any other program violations, the inspector is required to document those program violations and report them to the Manager of Housing for appropriate action.	If the inspector observes any other program violations, the inspector is required to document those program violations and report them to the Administrator of Housing for appropriate action.	Housing Division preference
Page 8-4	Quality Control inspections will be performed by the Housing Division Supervisor or other qualified person on the number of files required by SEMAP. The purpose of Quality Control inspections is to ascertain that each inspector is conducting accurate and complete inspections, and to ensure that there is consistency among inspectors in application of the HQS.	Quality Control inspections will be performed by the Administrator of Housing or a designated person on the number of files required by SEMAP. The purpose of Quality Control inspections is to ascertain that each inspector is conducting accurate and complete inspections, and to ensure that there is consistency among inspectors in application of the HQS.	Housing Division preference
Page 8-5		Doors All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold. All interior doors must have no holes, have all trim intact, and be openable without the use of a key.	Local codes and 982.401(a)(41)
Page 8-6	Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling ☐ Obstacles that prevent safe entrance or exit from unit ☐ Natural or Liquid Propane gas leak or fumes ☐ Any electrical problem or condition that could result in shock or fire ☐ Failure to maintain a thermal environment healthy for the human body ☐ Conditions that present the imminent possibility of injury ☐ Lack of one functioning toilet ☐ Utilities not in service, including no running hot water ☐ Inoperable smoke detectors	Any condition that jeopardizes the security of the unit Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling Natural or LP gas or fuel oil leaks A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled Any electrical problem or condition that could result in shock or fire A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed A light fixture is hanging by its wires A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections Any nicks, abrasions, or fraying of the insulation that exposes conducting wire Exposed bare wires or electrical connections Any condition that results in openings in electrical panels or electrical control device enclosures Water leaking or ponding near any electrical device Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit. Utilities not in service, including no running hot water Conditions that present the imminent possibility of injury	24 CFR 982.404 (A); FR NOTICE 1/18/17



Page 8-6	<p><input checked="" type="checkbox"/> Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling</p> <p><input checked="" type="checkbox"/> Obstacles that prevent safe entrance or exit from unit</p> <p><input checked="" type="checkbox"/> Natural or Liquid Propane gas leak or fumes</p> <p><input checked="" type="checkbox"/> Any electrical problem or condition that could result in shock or fire</p> <p><input checked="" type="checkbox"/> Failure to maintain a thermal environment healthy for the human body</p> <p><input checked="" type="checkbox"/> Conditions that present the imminent possibility of injury</p> <p><input checked="" type="checkbox"/> Lack of one functioning toilet</p> <p><input checked="" type="checkbox"/> Utilities not in service, including no running hot water</p> <p><input checked="" type="checkbox"/> Inoperable smoke detectors</p>	<p>The following are considered life-threatening conditions:</p> <p>Any condition that jeopardizes the security of the unit</p> <p>Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling</p> <p>Natural or LP gas or fuel oil leaks</p> <p>A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled</p> <p>Any electrical problem or condition that could result in shock or fire</p> <p>A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed</p> <p>A light fixture is hanging by its wires</p> <p>A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit</p> <p>A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed</p> <p>An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses</p> <p>A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections</p> <p>Any nicks, abrasions, or fraying of the insulation that exposes conducting wire</p> <p>Exposed bare wires or electrical connections</p> <p>Any condition that results in openings in electrical panels or electrical control device enclosures</p> <p>Water leaking or ponding near any electrical device</p> <p>Any condition that poses a serious risk of electrocution or fire and</p>	24 CFR 982.404 (A); FR NOTICE 1/18/17
GL-14		<p>A veteran is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than <u>dishonorable</u>.</p>	3(b)(3)(E) of the 1937 Act.
Page 9-2		<p>During the annual reexamination process, Housing Division will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents or is considered a vulnerable youth based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.</p> <p>If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.</p> <p>If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), Housing Division will process a</p>	(24 CFR 982.552(b)(5)); 24 CFR 5.612
Page 8-8 I		<p>Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit</p>	24 CFR 982.551

Page 9-3	Families are required to participate in a group annual reexamination meeting. Families may then be scheduled for an individual interview to complete the reexamination process, if needed. Notification of the annual reexamination group meetings will be sent by first-class mail and will contain the date, time, and location of the meeting. If the family is unable to attend the scheduled group meeting or individual interview, the family should contact the Housing Division in advance of the meeting or interview to schedule a new appointment. If a family does not attend the scheduled annual reexamination meeting, the Housing Division will send a second notification with a new appointment time. If a family fails to attend two scheduled meetings and/or interviews without Housing Division approval, or if the notice is returned by the post office with no forwarding address, a notice of termination will be sent to the family. An advocate, interpreter, or other assistant may assist the family in the interview. All adult household members are required to attend the annual recertification meeting. If the head of household is not in attendance, the family will be rescheduled. In cases where there is an adult member of the family that is temporarily absent and cannot attend the meeting (for example a college student who lives of town), the Housing Division may obtain information from the absent adult family member using fax, email, or mail. Documents with signatures of family members who cannot appear in person must be notarized. If participation in a meeting or individual interview poses a hardship because of a family member's disability, the family should contact the Housing Division to request a reasonable accommodation.	Families are required to participate in an annual reexamination meeting. Notifications of the annual reexamination meeting will be sent by first-class mail and will contain the date, time and location of the meeting. If the family is unable to attend the scheduled interview, the family should contact the Housing Division in advance of the interview to schedule a new appointment. If a family does not attend the scheduled annual reexamination meeting, the Housing Division will send a second notification with a new appointment time. If a family fails to attend two scheduled interviews without Housing Division approval, or if the notice is returned by the post office with no forwarding address, a notice of termination will be sent to the family. An advocate, interpreter, or other assistant may assist the family in the interview. All adult household members are required to attend the annual recertification meeting. If the head of household is not in attendance, the family will be rescheduled. In cases where there is an adult member of the family that is temporarily absent and cannot attend the meeting (for example a college student who lives of town), the Housing Division may obtain information from the absent adult family member using fax, email, or mail. Documents with signatures of family members who cannot appear in person must be notarized. If participation in a interview poses a hardship because of a family member's disability, the family should contact the Housing Division to request a reasonable accommodation.	[24 CFR 982.516]
page 9-5	The Housing Division will pay a monthly for a family that is equal to the lower of ...	The Housing Division will pay a monthly housing assistance payment for a family that is equal to the lower of ...	Currently a typo
page 9-5	Families are required to report all changes (increase or decreases) in income within 30 calendar days of the date the change takes effect.	Families are required to report all changes (increase or decreases) in income within 30 calendar days of the date the change takes effect. Except, if a family obtains new employment within 30 days of removing employment, they will have 10 days to report the new source. The client must be without income for 30 days to receive the 30 day reporting period.	[24 e FR 982.516]
Page 10-1	The family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.314(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the Housing Division, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4), 24 CFR 982.353(b)].	A family may request permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the Housing Division will request documentation in accordance with section 11-II.E of this plan. Housing Division reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the Housing Division will document the waiver in the family's file. The Housing Division has adopted an emergency transfer plan, which is included as Exhibit 12-1 to this plan.	24 CFR 5.2007, Notice PIH 2012-42].
page 10-2		The Housing Division will create a list of families whose moves have been denied due to insufficient funding. The Housing Division will keep the family's request for portability open indefinitely, and when funds become available, the families on this list will take precedence over families on the waiting list. The Housing Division will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list; the Housing Division will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.	Notice PIH 2016-09
page 10-3	The Housing Division will stop the HAP payment on the date indicated on the move out notice. It is the responsibility of the landlord to notify the Housing Division if the family has not vacated unit.	The Housing Division will stop the HAP on the date indicated on the move out notice. For program purposes, the move out date is the last day of a month because each housing assistance payment represents a full month payment. The family must assume full responsibility for all housing costs accrued after the move out date.	[24 CFR 982.311(d)]

page 10-5	For families approved to move under portability, the Housing Division will issue a new voucher within 10 business days of the Housing Division's approval to move. The term of the voucher will be 120 days.	For families approved to move under portability, the Housing Division will issue a new voucher within 10 business days of the Housing Division's approval to move. The term of the voucher will be 60 days. Extensions will be granted based on request from RHA and any need for reasonable accommodation	PHA POLICY
page 10-10		If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.	24 CFR 982.355(e), Notice PIH 2016-09
page 10-12	The Housing Division will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.	The Housing Division will send its initial billing notice by fax or e-mail.	Notice PIH 2016-09
Page 11-2, Ref 11-15	Serious and repeated lease violations will include, but not be limited to, nonpayment of rent and/or utilities, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises, unauthorized occupants and criminal activity. The criterion to be used will be whether or not the reason for the eviction was the fault of the tenant and/or guests.	Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. The criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].	24 CFR 5.2005(c)(1)
Page 11-10	Whenever a family's assistance will be terminated, the Housing Division will send a written notice of termination to the family and to the owner of the family's unit. The notice will state the date that the termination will become effective. This date will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other Housing Division policies, or the circumstances surrounding the termination require.	Whenever a family's assistance will be terminated, the Housing Division will send a written notice of termination to the family and to the owner. The Housing Division will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other Housing Division policies, or the circumstances surrounding the termination require.	HCV GB, page 15-7
Page 11-11	If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the Housing Division sends to the family must meet the additional HUD and Housing Division notice requirements discussed in this Administrative Plan. Although HUD does not require the Housing Division to include information about the protections against termination of assistance provided by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, or stalking, the Housing Division has the discretion to include such information.	Whenever a family's assistance is proposed for termination, the Housing Division will send a written notice of proposal of termination to the family and to the owner. The Housing Division will also send a form HUD-5382 and HUD-5380 to the family with the proposal of termination notice. The notice will state the date on which the proposed date of termination will become effective. This date generally will be at least 30 calendar days following the date of the Housing Board informal hearing decision, if requested, or proposal termination notice, but exceptions will be made whenever HUD rules, other Housing Division policies, or the circumstances surrounding the termination require. When the Housing Division notifies an owner that a family's assistance will be terminated, the Housing Division will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.	HCV GB, page 15-8
	If the eviction action is finalized in court, the owner must provide the Housing Division with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 14 calendar days following the court-ordered <u>eviction</u> .	If the eviction action is finalized in court, the owner must provide the Housing Division with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court ordered eviction.	24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum
Addendum B		Add entire Addendum B (Homeownership)	
Page 12-1		Part XI: INVESTIGATING ERRORS AND PROGRAM ABUSE: This parts contains the process the Housing Division will use when a participant is potentially withholding information causing an <u>error or alleged program abuse</u> .	Housing Division preference
page 12-9	A copy of the VAWA notice	The Housing Division will also send a form HUD-5382 to the family with the termination notice.	24 CFR 5.2007, Notice PIH 2012-42].
page 12-18	Any repayment agreement between the Housing Division and a family must be signed and dated by the Manager of Housing and by the head of household and spouse/co-head (if applicable)	Any repayment agreement between the Housing Division and a family must be signed and dated by the Administrator of Housing and by the head of household and spouse/co-head (if applicable)	Housing Division preference
page 12-19	Renegotiations may only be approved by the Housing Division's Manager of Housing. No approval will be granted to extend any term beyond the established payment thresholds cited in this section. Repayment agreement requirements can be suspended if the family qualifies for a hardship exemption. The repayment agreement payments will resume once the hardship exemption expires	Renegotiations may only be approved by the Housing Division's Administrator of Housing. No approval will be granted to extend any term beyond the established payment thresholds cited in this section. Repayment agreement requirements can be suspended if the family qualifies for a hardship exemption. The repayment agreement payments will resume once the hardship exemption expires.	Housing Division preference

Page 12-28 METHODOLOGY		If, due to budgetary constraints, the Housing Division must rescind vouchers that have already been issued to families, vouchers will be rescinded in order of the date and time they were issued, starting with the most recently issued vouchers. Families who have their voucher rescinded will be notified in writing and will be reinstated to their former position on the waiting list. When funding is again available, families will be selected from the waiting list in accordance with the Housing Division selection policies described in Chapter 3.	24 CFR 982.302
page 12-28	The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence, and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA	The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA. In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and the Housing Division policies in three areas: notification, documentation, and emergency transfer.	24 CFR 982.310(h), 24 CFR 982.310(h)(4)}
page 12-29	A summary of the rights and protections provided by VAWA to HCV program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 12-1 and 12-2) ¶ The definitions of domestic violence, dating violence, and stalking provided in VAWA (included in Exhibits 12-1 and 12-2) ¶ An explanation of the documentation that the Housing Division may require from an individual who claims the protections provided by VAWA (included in Exhibits 12-1 and 12-2) ¶ A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking ¶ A statement of the Housing Division's obligation to keep confidential any information that it receives from a victim unless (a) the Housing Division has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 12-1 and 12-2) ¶ The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 12-1 and 12-2)	A notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 12-1) A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 12-2) A copy of the Housing Division's emergency transfer plan (Exhibit 12-3) A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 12-4) The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibit 12-1 ) Contact information for local victim advocacy groups or service providers	24 CFR 982.310(h), 24 CFR 982.310(h)(4)}
page 12-30	The VAWA information provided to owners will consist of the notice in Exhibit 12-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.	The VAWA information provided to applicants and participants will consist of the notice in Exhibit 12-2	24 CFR 982.310(h), 24 CFR 982.310(h)(4)}
page 12-30	The VAWA information provided to owners will consist of the notice in Exhibit 12-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.	The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking and Alternate Documentation	24 CFR 982.310(h), 24 CFR 982.310(h)(4)}
page 12-31	(two or more forms HUD-50066)	two or more forms HUD - 5382	24 CFR 5.2007€

Page 12-32		<p>PART XI: INVESTIGATING ERRORS AND PROGRAM ABUSE 12-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE</p> <p>When the PHA Will Investigate</p> <p>PHA Policy</p> <p>The Housing Division will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the Housing Division to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.</p> <p>The Housing Division will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.</p> <p>Consent to Release of Information [24 CFR 982.516]</p> <p>The Housing Division may investigate possible instances of error or abuse using all available Housing Division and public records. If necessary, the Housing Division will require HCV families to sign consent forms for the release of additional information.</p> <p>Analysis and Findings</p> <p>PHA Policy</p> <p>The Housing Division will base its evaluation on a preponderance of the evidence collected during its investigation.</p> <p>Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.</p> <p>For each investigation Housing Division will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed Housing Division, and (3) what corrective measures or penalties will be assessed.</p> <p>Consideration of Remedies</p> <p>All errors and instances of program abuse must be corrected prospectively. Whether the</p>	24 CFR 982.516
12-32-33		<p>FRAUD AND PROGRAM ABUSE RECOVERIES</p> <p>Housing Division may retain a portion of program fraud losses that Housing Division recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].</p> <p>Housing Division must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits Housing Division to retain the greater of:</p> <ul style="list-style-type: none"> <li>• 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or</li> <li>• Reasonable and necessary costs that Housing Division incurs related to the collection including costs of investigation, legal fees, and agency collection fees.</li> </ul> <p>The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.</p> <p>If HUD incurs costs on behalf of Housing Division related to the collection, these costs must be deducted from the amount retained by Housing Division.</p>	

Page 12-33		<p>PHA-CAUSED ERRORS OR PROGRAM ABUSE</p> <p>The responsibilities and expectations of Housing Division staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a Housing Division staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in Housing Division personnel policy.</p> <p>Housing Division-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.</p> <p>Repayment to the PHA</p> <p>Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by Housing Division staff [HCV GB. 22-12].</p> <p>PHA Reimbursement to Family or Owner</p> <p>Housing Division must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from Housing Division's administrative fee reserves [HCV GB p. 22-12].</p>	HCV GB 22-12
Page 13-		Add entire PBV policy	Replacing PIH Notice with Chapter 13

## Chapter 13

### 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, 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 HOUSING DIVISION will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, 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. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

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 PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. 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)].

#### PHA Policy

The HOUSING DIVISION will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or under a HAP contract, the HOUSING DIVISION is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the HOUSING DIVISION is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the HOUSING DIVISION has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]]**

The HOUSING DIVISION may project-base an additional 10 percent of its units above the 20 percent program limit, if 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).
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- 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 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

#### PHA Policy

The HOUSING DIVISION will not set aside units above the 20 percent program limit.



### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be accepted, the unit must meet the following conditions:

- The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:
  - Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or
  - The unit was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that have previously received either PBV or HCV assistance are not covered under the exception.

#### PHA Policy

The HOUSING DIVISION will not project-base any of the above unit types.

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the HOUSING DIVISION 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.

#### PHA Policy

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

### **17-I.C. 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.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The HOUSING DIVISION 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 HOUSING DIVISION must comply with the HOUSING DIVISION Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

#### **17-II.A. OVERVIEW**

With certain exceptions, the HOUSING DIVISION must describe the procedures for owner submission of PBV proposals and for HOUSING DIVISION selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the HOUSING DIVISION must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The HOUSING DIVISION may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

#### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]**

##### **Units Selected Non-Competitively [FR Notice 1/18/17: Notice PIH 2017-21]**

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

- PHA request for PBV Proposals. The HOUSING DIVISION may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the HOUSING DIVISION request. The HOUSING DIVISION 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 HOUSING DIVISION may select proposal 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 program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), 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

competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The HOUSING DIVISION need not conduct another competition.

### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

HOUSING DIVISION 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 HOUSING DIVISION. 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 HOUSING DIVISION 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 HOUSING DIVISION will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

#### **[Mesquite News and The Daily Commercial Record]**

In addition, the HOUSING DIVISION will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The HOUSING DIVISION will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the HOUSING DIVISION estimates that it will be able to assist under the funding the HOUSING DIVISION is making available. Proposals will be due in the HOUSING DIVISION office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the HOUSING DIVISION by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The HOUSING DIVISION 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 HOUSING DIVISION 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

- Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the HOUSING DIVISION will rate partially assisted projects on the

percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

#### PHA Requests for Proposals for Existing Housing Units

The HOUSING DIVISION will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

##### **[Mesquite News and the Daily Commercial Record]**

In addition, the HOUSING DIVISION will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The HOUSING DIVISION will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the HOUSING DIVISION estimates that it will be able to assist under the funding the HOUSING DIVISION is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Extent to which the applicant has site control and has a purchase contract or option to purchase effective through anticipated closing date;

- Location within the City of Mesquite Housing Division's operating jurisdiction

- Demonstration of financial feasibility and operational viability

- 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 HOUSING DIVISION 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 HOUSING DIVISION 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 on an ongoing basis.

The HOUSING DIVISION may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

##### **[Mesquite News and the Daily Commercial Record]**

In addition to, or in place of advertising, the HOUSING DIVISION 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 HOUSING DIVISION will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the HOUSING DIVISION 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, or Renewal Community.

**PHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

A HOUSING DIVISION-owned unit 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 HOUSING DIVISION-owned units were appropriately selected based on the selection procedures specified in the HOUSING DIVISION administrative plan. If the HOUSING DIVISION selects a proposal for housing that is owned or controlled by the HOUSING DIVISION, the HOUSING DIVISION must identify the entity that will review the HOUSING DIVISION proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of HOUSING DIVISION-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the HOUSING DIVISION and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the HOUSING DIVISION jurisdiction (unless the HOUSING DIVISION is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

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

**PHA Notice of Owner Selection [24 CFR 983.51(d)]**

The HOUSING DIVISION must give prompt written notice to the party that submitted a selected proposal and must 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.

PHA Policy

Within 10 business days of the HOUSING DIVISION making the selection, the HOUSING DIVISION will notify the selected owner in writing of the owner's selection for the PBV program. The HOUSING DIVISION 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.

In addition, the HOUSING DIVISION will publish its notice for selection of PBV proposals in the same newspapers and trade journals the HOUSING DIVISION used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The HOUSING DIVISION will also post the notice of owner selection on its electronic web site.

The HOUSING DIVISION will make available to any interested party its rating and ranking sheets and documents that identify the HOUSING DIVISION 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 HOUSING DIVISION will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The HOUSING DIVISION will make these documents available for review at the HOUSING DIVISION during normal business hours. The cost for reproduction of allowable documents will be \$.10 per page.

#### **17-II.C. HOUSING TYPE [24 CFR 983.52]**

The HOUSING DIVISION may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HOUSING DIVISION selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The HOUSING DIVISION must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The HOUSING DIVISION choice of housing type must be reflected in its solicitation for proposals.

#### **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

##### **Ineligible Housing Types [24 CFR 983.53]**

The HOUSING DIVISION may not attach or pay PBV assistance to 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; manufactured homes; and transitional housing. In addition, the HOUSING DIVISION may not attach or pay PBV assistance for a unit occupied by an owner and the HOUSING DIVISION may not select or enter into an agreement to enter into a

HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. 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. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

#### **Subsidized Housing [24 CFR 983.54]**

A PHA may not attach or pay PBV assistance to units 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 unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- 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;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

#### **17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14]**

The HOUSING DIVISION may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

The HOUSING DIVISION must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, the HOUSING DIVISION may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and

determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy-layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

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.

#### **17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

##### **25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 1/18/17, and Notice PIH 2017-21]]**

In general, the HOUSING DIVISION may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP 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 during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

##### **Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

Exceptions are allowed and PBV units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the HOUSING DIVISION and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the



exception to apply to the unit. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

#### PHA Policy

Excepted units will be limited to units for elderly families.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the HOUSING DIVISION either issued the RFP under which the project was selected or the HOUSING DIVISION selected the project without competition, the unit met at least one of the two following conditions:
  - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 303), Housing for Persons with disabilities (Section 811), the Rental Supplement program,
  - The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

#### PHA Policy

The HOUSING DIVISION does not have any PBV units that are subject to the per project cap exception.

### **Promoting Partially-Assisted Projects [24 CFR 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 percent.

#### PHA Policy:

The HOUSING DIVISION will not provide assistance for excepted units. Beyond that, the HOUSING DIVISION will not impose any further cap on the number of PBV units assisted per project.

## **17-ILG. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]**

The HOUSING DIVISION may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the HOUSING DIVISION 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 HOUSING DIVISION Plan under 24 CFR 903 and the HOUSING DIVISION administrative plan.

In addition, prior to selecting a proposal, the HOUSING DIVISION 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 HQS site and neighborhood standards at 24 CFR 982.401(l).

#### PHA Policy

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

However, the HOUSING DIVISION will grant exceptions to the 20 percent standard where the HOUSING DIVISION 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, 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.

#### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The HOUSING DIVISION may not enter into an agreement to enter into a HAP contract nor enter into a 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 983.57(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;
- 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.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The HOUSING DIVISION activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. 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.). The HOUSING DIVISION may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically

excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The HOUSING DIVISION may not enter into an agreement to enter into a HAP contract or A HAP contract with an owner, and the HOUSING DIVISION, 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 the environmental review is completed.

The HOUSING DIVISION must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The HOUSING DIVISION 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 housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

#### **17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

#### **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, apply to the PBV program.

#### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

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 HOUSING DIVISION 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 implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

## **17-III.D. INSPECTING UNITS**

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

The HOUSING DIVISION must examine the proposed site before the proposal selection date. If the units to be

assisted already exist, the HOUSING DIVISION must inspect all the units before the proposal selection date, and

must determine whether the units substantially comply with HQS, unless the HOUSING DIVISION has adopted a

policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.**Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

The HOUSING DIVISION must inspect each contract unit before execution of the HAP contract. The HOUSING DIVISION may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### **Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]**

Before providing assistance to a new family in a contract unit, the HOUSING DIVISION must inspect the unit.

The HOUSING DIVISION may not provide assistance on behalf of the family until the unit fully complies with

HQS, unless the HOUSING DIVISION has adopted a policy to enter into a HAP contract for units that fail the

Initial HQS inspection as a result of only non-life-threatening conditions.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, the HOUSING DIVISION 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 HQS. Turnover inspections are not counted toward meeting this inspection requirement.

#### PHA Policy

The HOUSING DIVISION will inspect all PBV units on an annual basis to determine if the contract units and the premises are maintained in accordance with HQS.

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

### **Other Inspections [24 CFR 983.103(e)]**

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

The HOUSING DIVISION must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

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

#### **Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, 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]**

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**

In order to offer PBV assistance in rehabilitated or newly constructed units, the HOUSING DIVISION must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The HOUSING DIVISION may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the HOUSING DIVISION agrees that upon timely completion of such development in accordance with the terms of the Agreement, the HOUSING DIVISION will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

### **Content of the Agreement [24 CFR 983.152(d)]**

At a minimum, the Agreement 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 (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner 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 Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. 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.
- Any additional requirements for quality, architecture, or design over and above HQS.

### **Execution of the Agreement [24 CFR 983.153]**

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

#### PHA Policy

The HOUSING DIVISION will enter into the Agreement 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. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement 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. The HUD-



prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

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.

#### **Equal Opportunity [24 CFR 983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **Owner Disclosure [24 CFR 983.154(d) and (e)]**

The Agreement 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 Agreement, the HAP contract, or HUD regulations.

#### **17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

#### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the HOUSING DIVISION in the form and manner required by the HOUSING DIVISION:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the HOUSING DIVISION's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

#### PHA Policy

The HOUSING DIVISION 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 HOUSING DIVISION will specify any additional documentation requirements in the Agreement to enter into HAP contract.

#### **PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. 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 Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

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. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **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;
- The HAP contract term;

- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

#### **Execution of the HAP Contract [24 CFR 983.204]**

The HOUSING DIVISION may not enter into a HAP contract until each contract unit has been inspected and the HOUSING DIVISION has determined that the unit complies with the Housing Quality Standards (HQS), unless the HOUSING DIVISION has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions. For existing housing, the HAP contract must be executed promptly after the HOUSING DIVISION selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the HOUSING DIVISION has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

##### PHA Policy

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

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the HOUSING DIVISION determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

#### **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. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

##### PHA Policy

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

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the HOUSING DIVISION may extend the term of the contract for an additional term of up to 20 years if the HOUSING DIVISION determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A HOUSING DIVISION may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the HOUSING DIVISION agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions

are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of HOUSING DIVISION-owned units, any extension of the term of the HAP contract must be agreed upon by the HOUSING DIVISION and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

#### PHA Policy

When determining whether or not to extend an expiring PBV contract, the HOUSING DIVISION 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 lease(s);

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.

#### ***Termination by PHA [24 CFR 983.205(c) ; FR Notice 1/18/17]***

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

#### ***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

#### **Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. 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 may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based 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 as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. 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. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. 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.

#### **Remedies for HQS Violations [24 CFR 983.208(b)]**

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 HQS. If the PHA determines that a contract does not comply with HQS, 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 HOUSING DIVISION will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

### **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

#### **Substitution of Contract Units [24 CFR 983.207(a)]**

At the HOUSING DIVISION's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the HOUSING DIVISION must inspect the proposed unit and determine the reasonable rent for the unit.

#### **Addition of Contract Units [FR Notice 1/18/17]**

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must

submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

#### PHA Policy

The HOUSING DIVISION will not add contract units to the HAP contract.

#### **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) 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.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]**

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

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- 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, 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;
- 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.

## **17-V.F. ADDITIONAL HAP REQUIREMENTS**

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

The owner is required to maintain and operate the contract units and premises in accordance with HQS, 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.

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 Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

#### PHA Policy

The HOUSING DIVISION will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The HOUSING DIVISION will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

### **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 amount of the vacancy payment will be 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).

#### PHA Policy

The HOUSING DIVISION will decide on a case-by-case basis if the HOUSING DIVISION 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.

## **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.

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 HOUSING DIVISION 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)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting 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 these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

#### **17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also 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.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

#### PHA Policy

The HOUSING DIVISION will establish and manage a separate waiting list for the whole PBV program once it has offered PBV assistance to applicants on its tenant-based waiting list.

### **17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA 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.

#### **Income Targeting [24 CFR 983.251(c)(6)]**

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 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)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

#### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

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.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with "excepted units" for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

#### PHA Policy

The HOUSING DIVISION will provide a selection preference when required by the regulation (e.g., eligible in-place families, elderly families or units with supportive services, or mobility impaired persons for accessible units). The HOUSING DIVISION will not offer any additional preferences for the PBV program or for particular PBV projects or units.

## **17-VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

The PHA is prohibited from taking 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;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***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 and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, 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***

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **17-VI.F. OWNER SELECTION OF TENANTS**

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)].

#### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. 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 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. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

##### PHA Policy

The owner must notify the HOUSING DIVISION in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The HOUSING DIVISION will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

#### **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, 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 HOUSING DIVISION 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 HOUSING DIVISION will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of the HOUSING DIVISION's notice.

#### **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

##### **PHA Responsibility**

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

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

In addition, the HOUSING DIVISION may offer the owner other information the HOUSING DIVISION 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 HOUSING DIVISION must provide applicant families a description of the HOUSING DIVISION policy on providing information to owners, and the HOUSING DIVISION must give the same types of information to all owners.

The HOUSING DIVISION may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

#### PHA Policy

The HOUSING DIVISION 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 HQS 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.

#### **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 HOUSING DIVISION 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.

#### ***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 HOUSING DIVISION 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 HOUSING DIVISION 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 HOUSING DIVISION 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 the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

#### PHA Policy

The HOUSING DIVISION 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 10 business days of the HOUSING DIVISION's determination. The HOUSING DIVISION will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project;

PBV assistance in another project; and  
Tenant-based voucher assistance.

If the HOUSING DIVISION offers the family a tenant-based voucher, the HOUSING DIVISION 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 HOUSING DIVISION) 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 HOUSING DIVISION 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, 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, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

#### PHA Policy

When the HOUSING DIVISION offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 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 30-day time frame, the HOUSING DIVISION will terminate the housing assistance payments at the expiration of this 30-day period.

The HOUSING DIVISION may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

#### **Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. 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.

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. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

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

#### **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

The PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families



- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

#### PHA Policy

The HOUSING DIVISION will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members’ control.

In all other cases, the HOUSING DIVISION will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the HOUSING DIVISION will terminate the housing assistance payments at the expiration of this 30-day period.

The HOUSING DIVISION may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

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 agreement to enter into HAP Contract (Agreement) 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.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 CFR 983.301]**

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, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **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. Different limits apply to 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;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, 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 approved exception payment standard;

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

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

### ***Definitions***

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 Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

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

### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. 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
- 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 HOUSING DIVISION will elect within the HAP contract not to reduce rents below the initial level, with the exception of 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 HOUSING DIVISION will use the higher initial rent to owner amount.

### **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.

Any HUD-approved 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 stand amount for use in the PBV program.

Likewise, 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 HOUSING DIVISION 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 HOUSING DIVISION 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 HOUSING DIVISION 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 HOUSING DIVISION determines it is necessary due to HOUSING DIVISION budgetary constraints.

#### **Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs (either by HUD-designation or because the PHA requested HUD approval to use SAFMRs) may apply SAFMRs to all future PBV HAP contracts.

#### PHA Policy

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

#### **Redetermination of Rent [24 CFR 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

#### ***Rent Increase***

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.D.). 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).

#### PHA Policy

An owner's request for a rent increase must be submitted to the HOUSING DIVISION 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The HOUSING DIVISION 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 HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

#### ***Rent Decrease***

This section clarifies that the PHA may decrease the rent to owner based on program requirements, regardless of whether the owner requested a rent adjustment.

#### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. 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 HOUSING DIVISION 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)]**

Any rent changes for PHA-owned units must be determined by the independent entity approved by HUD.

#### **17-VIII.C. REASONABLE RENT [24 CFR 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 substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

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.

### ***Comparability Analysis***

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**

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 and to the HUD field office where the project is located.

### **Owner Certification of Reasonable Rent**

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.D. 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 HQS 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]**

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

At the discretion of the HOUSING DIVISION, the HAP contract may provide for vacancy payments to the owner. The HOUSING DIVISION 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);
- 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.

### 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 HOUSING DIVISION of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made 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 HOUSING DIVISION may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the HOUSING DIVISION within 10 business days of the HOUSING DIVISION's request, no vacancy payments will be made.

## **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**

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 HOUSING DIVISION 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.