



**Section 8 Administrative Plan  
Project Based Voucher and  
Rental Assistance Demonstration  
Addendum**

## **PROJECT-BASED VOUCHERS**

### **PART I: GENERAL REQUIREMENTS**

#### **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, and in certain cases under HOTMA, up to 30 percent, of its voucher program budget authority 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)]. The Authority will operate a project-based voucher program using up to 20 percent, and in some cases 30 percent, of its budget authority 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 a HAP contract, the PHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the PHA 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 [24 CFR 983.6].

#### **TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

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

#### **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 the Authority may use its 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 Authority to ensure the owner complies with these requirements.

## **EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

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

## **PART II: PBV OWNER PROPOSALS**

### **II.A. OVERVIEW**

Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. The Authority may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

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

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

- PHA request for PBV Proposals. The Authority may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- Selection based on previous 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.

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

#### PHA Request for Proposals for Rehabilitated and Newly Constructed Units

If the Authority will be selecting proposals under the request for the PBV proposal the Authority's proposals must be designed and actually operated to provide broad public notice of opportunity to offer PBV proposals for consideration. In order for the proposal to be considered, the owner must submit the proposal to the PHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The Authority 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 Authority's 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 PHA 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 Authority will advertise its request for proposals (RFP) for existing housing in a local newspaper of general circulation and other means designated and actually operated to provide broad public notice. In addition, the PHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

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

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

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

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

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

The Authority 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.

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

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

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

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

#### **PHA-owned Units [24 CFR 983.51(e) and 983.59]**

The Authority may submit a proposal for project-based housing that is owned or controlled by the PHA. If the proposal for Authority -owned housing is selected, the Authority will use the HUD field office or HUD-approved independent entity to review the PHA selection and to administer the PBV program. The Authority will obtain HUD approval of the HUD field office or HUD-approved independent entity prior to selecting the proposal for PHA-owned housing.

The Authority may only compensate the independent entity and appraiser from Authority ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services. The PHA, independent entity, and appraiser 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 Authority will provide prompt written notice to the party that submitted a selected proposal and will give prompt public notice of such selection. Public notice procedures may include publication of notice in a local newspaper of general circulation.

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

The Authority 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 PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

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

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

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

The Authority may not attach or pay PBV assistance to any housing deemed ineligible in accordance with federal regulations, 24 CFR 983.53 and 24 CFR 983.54

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

The Authority may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements and guidelines set forth in the *Federal Register* notice published July 9, 2010. The HAP contract shall contain a owners certification that the project has not received and will not receive 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.

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

### **25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]**

Unless an exception as noted in 24 CFR 983.56(b) applies, the PHA 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 25 percent of the number of dwelling units (assisted or unassisted) in the project. The Authority on a case by case basis will provide PBV assistance for excepted units.

## **II.G. SITE SELECTION STANDARDS**

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

The Authority 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 Authority has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the Authority 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).

It is the Authority's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the Authority will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less. However, the Authority will grant exceptions to the 20 percent standard where the Authority 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.

The Authority 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.

## **II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The Authority shall comply with environmental regulations contained in 24 CFR parts 50 and 58. The Authority must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The Authority 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**

### **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. 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.

### **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 PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

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

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

The Authority must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the Authority must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the Authority may not execute the HAP contract until the units fully comply with HQS.

**Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

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

**Turnover Inspections [24 CFR 983.103(c)]**

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

**Annual/Biennial Inspections [24 CFR 983.103(d)]**

At least biennially during the term of the HAP contract, the Authority 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 annual inspection requirement.

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

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

The Authority 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 Authority must take into account complaints and any other information coming to its attention in scheduling inspections.

The Authority 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 Authority supervisory quality control HQS inspections, the Authority 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 Authority 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 Authority 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.

Mixed finance properties. In the case of a property assisted with PBV that is subject to alternative inspections, the Authority may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirements of 24 CFR 982.405(a).

## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **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.

### **IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the Authority 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(a)].

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

#### **Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]**

The Agreement must be executed promptly after Authority notice of proposal selection to the selected owner. Generally, the Authority may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the Authority may not enter into the Agreement until the environmental review is completed and the Authority has received environmental approval. However, the Authority does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure 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.

### **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.

### **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. The owner must present sufficient evidence of completion as described in 24 CFR 983.155(b)

#### **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)**

### **V.A. OVERVIEW**

The Authority must enter into a HAP contract with an owner for units that are receiving PBV assistance. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202] and must contain the required information as specified in 24 CFR 983.203.

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

The Authority may not enter into a HAP contract until each contract unit has been inspected and the Authority has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the Authority selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing

the HAP contract must be executed after the PHA 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.

#### **Term of HAP Contract [FR Notice 11/24/08]**

The Authority may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, the Authority may extend the term of the contract for an additional term of up to 15 years if the Authority determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. 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.

#### ***Termination by PHA [24 CFR 983.205(c)]***

The HAP contract must provide that the term of the Authority's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the Authority 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.

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 Authority 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 Authority. In this case, families living in the contract units must be offered tenant-based assistance.

#### **Remedies for HQS Violations [24 CFR 983.207(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.

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

#### **Substitution of Contract Units [24 CFR 983.206(a)]**

At the Authority'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 building

for a previously covered contract unit. Before any such substitution can take place, the Authority must inspect the proposed unit and determine the reasonable rent for the unit.

#### **Addition of Contract Units [24 CFR 983.206(b)]**

At the Authority's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of the Authority's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

#### **Removal of Units from the HAP Contract**

Units occupied by families whose income has increased during the tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP contract 180 days following the last housing assistance payment on behalf of the family. Reinstatement or substitution of units under the HAP contract must be permissible under 24 CFR 983.207.

#### **V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) 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.

#### **V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]**

The owner is responsible for performing all of the owner's obligations under the HAP contract and the lease.

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

##### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(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 Authority 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 Authority 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.

**Vacancy Payments [24 CFR 983.352(b)]**

The Authority will decide on a case-by-case basis if the Authority 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**

### **VI.A. OVERVIEW**

This part describes the requirements and policies related to eligibility and admission to the PBV program.

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

The Authority 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 Authority, 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 Authority's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### **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 Authority 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 Authority'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 Authority 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.

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

The Authority will establish a separate wait list for PBV units and will maintain a single waiting list for the Authority's whole PBV program

### **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 Authority's waiting list. The Authority may establish selection criteria or preferences for occupancy of

particular PBV units. The Authority may place families referred by the PBV owner on its PBV waiting list. For project based voucher developments which are developed in accordance with any other State funding, other criteria may supersede Authority's screening policies in determining the suitability of applicants for housing.

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

At least 75 percent of the families admitted to the Authority'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 Authority must first refer families who require such features to the owner.

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

The Authority will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," mobility impaired persons for accessible units). The Authority on a case by case basis offer additional preferences for the PBV program or for particular PBV projects or units.

### **V.I.E. OFFER OF PBV ASSISTANCE**

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

The Authority 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 Authority 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 Authority must provide a briefing packet that explains how the Authority 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 Authority 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. 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).

## **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 Authority from the Authority'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 Authority's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the Authority 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 Authority and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

### **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 Authority 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. The Authority 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 Authority's notice.

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

### **PHA Responsibility**

The Authority is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. The Authority will not conduct screening to determine a PBV applicant family's suitability for tenancy. The Authority 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

Authority 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**

### **VII.A. OVERVIEW**

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

### **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 Authority 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 contain all the requirements specified by the Federal Regulations and include the HUD-required tenancy addendum.

#### **Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]**

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, the Authority must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

#### **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 Authority a copy of all changes.

The owner must notify the Authority 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 Authority and in accordance with the terms of the lease relating to its amendment. The authority 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 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.

#### ***Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]***

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

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

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by Authority 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.

#### **Security Deposits [24 CFR 983.258]**

The owner may collect a security deposit from the tenant. The Authority may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. The return of the Security Deposit shall be controlled by New Jersey State law. 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 Authority has no liability or responsibility for payment of any amount owed by the family to the owner.

### **VII.C. MOVES**

#### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]**

If the Authority 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 Authority 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. If the Authority offers the family a tenant-based voucher, the Authority must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the Authority).

If the Authority 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 Authority, or both, the Authority must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the Authority.

#### **Family Right to Move [24 CFR 983.260]**

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 Authority. 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 Authority 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 Authority 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.

#### **VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261, FR Notice 11/24/08]**

The Authority may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by the Authority. At least one member must be receiving at least one qualifying supportive service.

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.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by the Authority, and the Authority must cease paying housing assistance payments on behalf of the non-qualifying family.

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 Authority.

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

### **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.

### **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), FR Notice 11/24/08]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. These 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 building, 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 a PHA-determined amount (not to exceed 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.

However, PHAs are permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

### ***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 building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

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

When determining the initial rent to owner, the Authority 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 Authority must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the Authority 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.

### **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 five percent or greater decrease in the published FMR.

### ***Rent Increase***

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

The request must be in writing and in the form and manner required by the Authority. The Authority may only make rent increases in accordance with the rent limits described previously.

There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

The Authority 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***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

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

### **PHA-owned Units [24 CFR 983.301(g)]**

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

### **17-VIII.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.

#### **When Rent Reasonable Determinations are Required**

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

- There is a five 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
- 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 Authority 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 Authority. The comparability analysis may be performed by Authority 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 Authority -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 Authority -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 Authority may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **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.

## **IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, the Authority 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 Authority 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 Authority 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.

#### **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 Authority determines that the vacancy is the owner's fault. If the Authority determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the Authority will notify the landlord of the amount of housing assistance payment that the owner must repay. The Authority will require the owner to repay the amount owed.

At the discretion of the Authority the HAP contract may provide for vacancy payments to the owner. The Authority may only make vacancy payments if:

- The owner gives the Authority 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 Section requested by the Authority 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 Authority and must provide any information or substantiation required by the Authority to determine the amount of any vacancy payment.

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 Authority of the vacancy in accordance with the policy 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 Authority may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the Authority within 10 business days of the Authority's request, no vacancy payments will be made.

#### **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 Authority in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the Authority 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 Authority 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 Authority. 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 Authority.

Likewise, the Authority is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The Authority is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The Authority 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 Authority 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.

## **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.

## **RENTAL ASSISTANCE DEMONSTRATION PROGRAM**

### **OVERVIEW AND HISTORY OF THE RAD PROGRAM**

RAD is intended to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to: 1) Preserve and improve public and other assisted housing. 2) Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs. 3) Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs. 4) Increase tenant mobility opportunities.

### **RAD ADMINISTRATIVE PLAN POLICIES**

This additional chapter is intended to address RAD PBV requirements only.

### **APPLICABLE REGULATIONS**

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L. No. 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act, 2014 (Public Law 113-76, approved January 17, 2014) and the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113- 235, approved December 6, 2014), collectively, the "RAD Statute." RAD requirements may be found in PIH-2012-32 (HA), REV-2, RAD Quick Reference Guide (10/14), The Welcome Guide for New Awardees: RAD 1st Component (3/15), and RAD FAQs. 23.4

### **EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

PHAs must comply with all applicable fair housing and civil rights laws, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated.

### **PBV PROJECT SELECTION**

Maximum Amount of PBV Assistance Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which is set at 20 percent of the amount of budget authority allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o) (13) (B) of the 1937 Act and 24 CFR § 983.6. Cap on Number of PBV Units in each Project Fifty percent (50%) of the units in each project may receive PBV assistance under RAD. An assisted household cannot be involuntarily displaced as a result of this provision. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families

receiving supportive services, or are within single-family properties. Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d). To implement these provisions, HUD is waiving section 8(o) (13) (D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the RAD converted project.

### **25 Percent per Project Cap [24 CFR 983.56]**

The limitation on the number of units receiving assistance is increased to 50 percent under RAD. An assisted household cannot be involuntarily displaced as a result of this provision.

### **Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b)]**

An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties.

#### *Family Responsibility to Comply with Supportive Service Plans*

New families selected for occupancy and assistance in a PBV supportive housing unit will be required to enter into an individualized supportive service plan with the service provider. The supportive service plan is intended to help the family: • Build family self-sufficiency; • Maintain their housing; and • Live independently and effectively in their community. In PBV developments offering supportive services, at least one family member is to receive/participate in the available supportive services. • At the time of initial lease execution between the family and the owner, the family must sign a statement which includes all family obligations, including the requirement to participate in a supportive service plan. • At the family's annual recertification, the Authority requires written documentation from the service provider indicating the family's continued compliance with the terms of the supportive services plans. • At the Authority's sole discretion, the Authority may request quarterly documentation of service plan compliance for new participants, or more frequent periodic documentation for families who have not fully complied with their supportive service plan. The family is eligible to receive assistance while the family is compliant with its supportive services plan. In addition, a family who has occupied a PBV unit and has been compliant with its supportive housing plan, and has successfully completed the supportive housing plan, is eligible to continue to receive PBV assistance so long as the family qualifies. Under RAD, the requirement that a family must actually receive services to reside in a unit where families receive supportive services differs. Families living in units that will convert under RAD must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent as grounds for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

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

In the case of a Authority that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the Covered Project(s) at Closing; the PHA may convey all program funds to the Covered Project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under public housing ACC, a contribution of Operating Funds to the Covered Project that exceeds the average amount the project has held in Operating Reserves over the past three years will trigger a subsidy layering review under 24 CFR § 4.13. Similarly, any contribution of Capital Funds, including RHF or DDTF, will trigger a subsidy layering review.

## **SITE SELECTION STANDARDS**

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b) (1) and (c) (2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity, for existing housing sites. If units are transferred to a different housing site, then deconcentration rule applies. HUD will conduct a front-end civil rights review of PBV RAD conversions that involve new construction that is located in an area of minority concentration (whether on the existing public housing site or on a new site) to determine whether it meets one of the conditions that would allow for new construction in an area of minority concentration. The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

## **ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The financing plan includes a requirement for an environmental review.

## **PART II - RAD PBV OWNERSHIP AND CONTRACT TERMS**

### **LEGAL OWNERSHIP OF UNIT**

For RAD public housing conversions, ownership must be either of the following:

- A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property.
- A private entity, if the property has low income tax credits. The PHA must maintain control via a ground lease.

### **HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The PBV RAD program uses the HAP contract for new construction or rehabilitated housing (HUD Form 52530A), as modified by the RAD rider (HUD Form 52621). The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The RAD rider must be attached to the PBV HAP Contract and effectuates the conversion of public housing to PBV under RAD PBV. The project must also have an initial RAD Use Agreement. All public housing RAD conversion properties financed with LIHTC are required to include an LIHTC rider.

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

When the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. The HAP contract effective date is the date of the financial closing for the property, whether or not all units meet HQS. Term of HAP Contract [24 CFR 983.205] The initial term of the HAP Contract may not be for less than 15 years, and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o) (13) (F) of the Act (which established a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term).

**Agreement to Enter Into HAP (AHAP) – Waived** For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable. For public housing conversions, an AHAP is not required. Instead, a RAD conversion commitment (RCC) between HUD and the PHA governs the construction work. For requirements for RAD PBV conversions see Notice PIH 2012-32, REV-2.

## **MANDATORY CONTRACT RENEWAL**

By statute, upon contract expiration, the agency administering the vouchers shall offer, and the PHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time /of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR § 983.205(b), governing the PHA discretion to renew the Contract for term of up to 15 years, will not apply. In the event that the HAP Contract is removed due to breach, non-compliance or insufficiency of Appropriations, for all units previously covered under the HAP Contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30% of 80% of median income for an appropriate size unit for the remainder of the term of the RAD Use Agreement.

## **INITIAL CONTRACT RENTS**

Initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 CFR § 983.301). To this effect, initial contract rents cannot exceed the lower of (a) the reasonable rent (as defined under 24 CFR § 983.303; (b) an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (c) the rent requested by the owner. PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle. Notwithstanding the current funding level, the initial rents are set at the lower of: • 110% of the fair market rent (FMR) or the PHA’s exception payment standard approved by HUD, or the alternate rent cap in a PHA’s MTW agreement • Reasonable rent in comparison to

the unassisted housing market • An amount determined by current funding o Adjusted through rent bundling or reconfiguration of units

## **ADJUSTING CONTRACT RENTS**

### **Rent Increase**

Contract rents will be adjusted annually by HUD's Operating Cost Adjustment Factor (OCAF) at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o) (13) (I) of the Act and 24 CFR § 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303. Contract rents may not exceed the reasonable rent, with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract. However, the rent to owner may fall below the initial contract rent in the following situations: • 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 § 983.55 (Prohibition of excess public assistance); or • If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant. The contract rent adjustment will be the lesser of: • The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the Federal Register • The reasonable rent

### **Rent Decrease**

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

### **Notice of Rent Change**

Rent adjustments are made on the contract anniversary date for all PBV units. Adjusted rents may not exceed the lower of the reasonable rent, or the contract rent increased by the operating cost adjustment factor (OCAF), except if the rent increase would result in a rent below the initial rent. Rents must not fall below the initial contract rent.

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

For PHA-owned PBV units, the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. Contract rents will be adjusted annually by HUD's Operating Cost Adjustment Factor ("OCAF) at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o) (13) (I) of the Act and 24 CFR § 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP Contract.

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

## **AMENDMENTS TO THE HAP CONTRACT**

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

In certain mixed finance projects, the PHA may ask HUD permission to have assistance float among unoccupied units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities. For 504 accessible units, assistance may only float to another 504 accessible unit with the same bedroom size and features. If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units, including any excepted units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward. The PHA may not reduce the number of assisted units without HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

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

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract. Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)] The PHA may not reduce the number of assisted units without HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

### **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. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

### **UTILITY ALLOWANCES**

When contract rent amounts are set initially, the amount does not include a utility allowances. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract. After conversion, unless a waiver is requested and approved by HUD, the PHA must maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively. These utility allowances are effective for in-place families at recertification. The PHA may request a waiver from the PIH Field Office, however, in order to establish site-specific utility allowance schedules. MTW agencies would instead secure approval through their MTW Plan. To be approved, the PHA must show good cause that the utility allowance schedule for their voucher program would either:

- Create an

undue cost for families because the utility allowance provided under the voucher program is too low, or • Discourage conservation and efficient use of HAP funds because the utility allowance provided under the voucher program would be excessive if applied to the Covered Project The PHA must submit an analysis of utility rates for the community and consumption data of project residents in comparison to community consumption rates; and a proposed alternative methodology for calculating utility allowances on an ongoing basis. When, as a result of a RAD conversion, the project will experience an improvement in energy and water efficiencies, PHAs can submit UA projections performed by a professional engineer, based on the project's plans and specifications that, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The projections must be submitted in the RAD UA Projections

The Authority will use the HCV utility allowance schedule for the RAD developments.

### **HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

For a discussion of funding during the first year after the RAD conversion for units converting to PBV under RAD, see Notice PIH 2012-32, REV-2.

## **PART III - RESIDENTS RIGHTS AND PARTICIPANTS**

### **PROHIBITED RE-SCREENING OF EXISTING TENANTS UPON CONVERSION**

Current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was overincome at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. The Authority will make their best effort to appropriately size households throughout the conversion. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

### **Income Targeting [24 CFR 982.201]**

The income targeting requirement does not apply to existing residents at the time of conversion. Subsequent new admissions count towards the PHA's calculation. In-Place Families [24 CFR 983.251(b)] For the RAD PBV program, in-place families means a family who lived in a preconversion property at the time assistance was converted from public housing to PBV under RAD.

**RELOCATION REQUIREMENTS [24 CFR 983.7]** In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample

informing notices are provided in Appendices 2-5 of PIH Notice 2014-17. In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.

## **RESIDENT RIGHT TO RETURN**

Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. As part of the conversion process, the PHA must consider the best way to transition families who are already on the existing public housing waiting list to the new PBV waiting list. Considerations vary depending on whether the current public housing waiting list is system-wide or site-based and on what type of waiting list the PHA will adopt once units are converted. While special consideration must be given when initially establishing the RAD PBV waiting list, once the waiting list is established, requirements are the same in RAD PBV as in the regular PBV program.

## **RENEWAL OF LEASE**

The PHA must renew all leases upon lease expiration, unless good cause exists. Consequently, 24 CFR § 983.257(b) (3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate. The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD. Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with — and must be signed on or before — the effective date of the RAD PBV HAP contract.

## **Tenancy Addendum [HUD 52530-C]**

The PBV owner and the family representative must sign the HUD form 52530-C Tenancy Addendum which is an attachment to the lease and outlines required lease provisions of the PBV program. PBV Statement of Family Responsibility [HUD 52578-B] A family representative must sign the HUD form 52578-B Statement of Family Responsibility and comply with obligations described therein, including participation in any required services.

## **SECURITY DEPOSIT [24 CFR 982.313 (a) and (b)]**

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. Otherwise the security deposit requirements for standard PBV apply.

## **REEXAMINATIONS**

A family living in a unit converted from public housing to RAD PBV will retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will submit a HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract.

## **PHASE-IN OF TENANT RENT INCREASES**

If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. The Authority will implement a five-year phase-in for families whose rent increases by more than the greater of 10 percent or \$25 as a result of the conversion as follows:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the Calculated PBV TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full Calculated PBV TTP

## **FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, the family will pay with owner an amount equal to their TTP. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Following conversion, the standard PBV regulations apply to any new families referred to the project.

## **PUBLIC HOUSING FSS AND ROSS PARTICIPANTS**

Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii)

does not apply to FSS participants in converted properties. Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants.

## **RESIDENT PARTICIPATION AND FUNDING**

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

## **RESIDENTS PROCEDURAL RIGHTS**

In addition to the regulations at 24 CFR § 983.257, related to owner termination of tenancy and eviction the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:

- A reasonable period of time, but not to exceed 30 days:
  - o If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - o In the event of any drug-related or violent criminal activity or any felony conviction;
- 14 days in the case of nonpayment of rent; and
- 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

## **INFORMAL REVIEWS AND HEARINGS**

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both the PHA and the project owner.

In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi), 31 an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a Project Owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

o For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.

o For any additional hearings required under RAD, the Authority will perform the hearing.

An informal hearing will not be required for class grievances or to disputes between residents not involving the Authority (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the Project Owner (as owner) or contract administrator. The Project Owner (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi). The Authority (as owner) provide opportunity for an informal hearing before an eviction.

## **Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]**

Under RAD, the requirement that a family must actually receive services to reside in a unit where families receive supportive services differs. Families living in units that will convert under RAD must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

### **EARNED INCOME DISREGARD**

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in this policy. Instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment); tenants that move into the property following conversion, etc.) is covered by this waiver.

### **WHEN TTP EXCEEDS GROSS RENT**

Following conversion, 24 CFR § 983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time. Further, a PHA must remove a unit from the contract when no assistance has been paid for 180 days. If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, HUD is imposing an alternative requirement that the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR §983.207 or, where "floating" units have been permitted.

### **UNDER-OCCUPIED UNIT**

If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in this unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized unit within a reasonable

period of time, as determined by the administering Authority. In order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project, 24 CFR § 983.260 is waived.

## **CHOICE MOBILITY VOUCHERS**

If the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the PHA must offer the family the opportunity for continued tenant based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance, if available. The Authority will apply a turnover cap of available Housing Choice Vouchers for RAD PBV families who wish to exercise mobility. For each calendar year, the Housing Choice Voucher program will only make 20% of its turnover vouchers available to families exercising Choice Mobility from a the RAD PBV program.

The Authority will maintain a waiting list for all RAD PBV families wishing to exercise mobility after one year of tenancy.

## **PART IV - HOUSING QUALITY STANDARD INSPECTIONS**

### **ANNUAL/BIENNIAL INSPECTIONS [24 CFR 983.103(d); FR Notice 6/25/14]**

Housing Quality Standards (HQS) apply to the standard and RAD PBV program. At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement. The PHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

### **INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

The RAD PBV program follows the same inspection requirements as the standard PBV program with the exception that RAD PBV units must meet HQS no later than the date of completion of initial repairs as indicated in the RAD Conversion Commitment (RCC). All turnover units must be inspected prior to leasing to an eligible family from the HAMC waiting list.

### **PHA-OWNED UNITS [24 CFR 983.51(e) and 983.59]**

For units converting to RAD PBV, housing quality standards inspections must be conducted by an independent entity approved by HUD.

## **SECTION EIGHT MANAGEMENT ASSESSMENT PROGRAM (SEMAP) INDICATORS [24 CFR 985.3 and form HUD-52648]**

All SEMAP indicators apply to both the standard and RAD PBV programs with the exception of SEMAP Indicator 12: Annual HQS Inspections. PBV HQS inspection requirements only call for a random sample of 20 percent of the units in each project to be inspected annually.

## **PART V - APPLICATIONS, WAITING LIST AND BRIEFINGS**

## **APPLICATIONS**

Projects will take applications according to the Authority's Administrative Plan

### **ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The Authority will maintain a PBV program-wide wait list and organize the waiting list according to Authority's Administrative Plan, which is based on time and date of application. PHAs must offer families on a public housing project-specific waiting list priority for occupancy at the converted site. The PHA must provide applicants full information about each development including an estimate of the wait time, location, occupancy, number and size of accessible units, amenities like day care, security, transportation and training programs at each development with a site-based waiting list. The system for selection from site-based waiting lists must be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement or complaint brought by HUD. The PHA must assess any changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based on confirmed and accurate PIC occupancy data. At least every three years, PHA must use independent testers to assure that the site-based system is not being implemented in a discriminatory manner. Applicants from the current public housing waiting list will be transferred to the PBV program-wide waitlist maintaining the date and time of their application to the original waiting list.

### **BRIEFINGS AND FAMILY OBLIGATIONS**

HUD regulations require the PHA to conduct mandatory briefings for applicant families who qualify for assistance in a PBV unit. The briefing provides a broad description of owner and family responsibilities and the PHA's procedures. The briefing shall include a description of the family's obligations under the program.