

Posted 8/1/19

## **Housing Choice Voucher (HCV) Administrative Plan Revisions**

### **NOTICE OF PUBLIC HEARING**

The Spokane Housing Authority Board of Commissioners invites SHA clients, residents, landlords, and the general public to attend a **PUBLIC HEARING** on a revised draft of SHA's HCV Administrative Plan on **September 23, 2019 at 3:30 P.M.** at 55 W. Mission Ave., Spokane.

A copy of the plan is available starting on 8/5/2019 for review through a link at [www.spokanehousing.org/](http://www.spokanehousing.org/) or during regular business hours at: 55 W. Mission Ave., Spokane.

Public Comments may be submitted in writing to: "HCV Admin Plan Comments – SHA", 55 W. Mission Ave, Spokane, WA 99201; by FAX to (509) 323-2364; by email to: [ptietz@spokanehousing.org](mailto:ptietz@spokanehousing.org); or at the scheduled Public Hearing.

Free Parking and accessibility for the disabled is available. If you need a reasonable accommodation to attend this meeting, please contact Amanda at 509-252-7125 or [acarpentier@spokanehousing.org](mailto:acarpentier@spokanehousing.org).

**NOTE:** Chapters 4, 17, 18 have material being revised.  
Additionally, all other chapters will have the dates in the footer revised.

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the SHA with the information needed to determine the family's eligibility. HUD requires the SHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the SHA must select families from the waiting list in accordance with HUD requirements and the SHA policies as stated in the administrative plan and the annual plan.

The SHA is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list and selecting families from the waiting list and must follow these policies and procedures consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the SHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance and that the SHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the SHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and the SHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process and discusses how applicants can obtain and submit applications. It also specifies how the SHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the SHA's waiting list is structured, when it is opened and closed and how the public is notified of the opportunity to apply for assistance. It also discusses the process the SHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide the SHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the SHA has the information needed to make a final eligibility determination.

#### PART I: THE APPLICATION PROCESS

##### 4-I.A. OVERVIEW

This part describes the SHA policies for making applications available, accepting applications making preliminary determinations of eligibility and the placement of applicants on the waiting

list. This part also describes the SHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities and people with limited English proficiency (LEP).

#### **4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]**

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the SHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the SHA. The SHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the SHA's application.

##### SHA Policy

- Depending upon the length of time that applicants may need to wait to receive assistance, the SHA may use a one- or two-step application process.
- A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.
- A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the SHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.
- When the waiting list is open for applications, families may submit electronic application forms from the SHA's office during normal business hours or on line utilizing a link located on the SHA's website at [spokanehousing.org](http://spokanehousing.org).
- Applications must be complete in order to be accepted by the SHA for processing. If an application is incomplete, the SHA will notify the family of the additional information required.

#### **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

##### **Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13]**

The SHA must take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard SHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The SHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible or the SHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the SHA's policies related to providing reasonable accommodations for people with disabilities.

##### **Limited English Proficiency**

The SHA is required to take reasonable steps to ensure equal access to its programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full

discussion on the SHA's policies related to ensuring access to people with limited English proficiency (LEP).

#### **4-I.D. PLACEMENT ON THE WAITING LIST**

The SHA must review each complete application received and make a preliminary assessment of the family's eligibility. The SHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the SHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list or to any particular position on the waiting list [24 CFR 982.202(c)].

##### **Ineligible for Placement on the Waiting List**

###### SHA Policy

If the SHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the SHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

##### **Eligible for Placement on the Waiting List**

###### SHA Policy

- The SHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a complete application.
- Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.
- Applicants with a targeted or local preference will be placed on the waiting list according to any preference(s) for which they qualify and the date and time their complete application is received by the SHA.

## **PART II: MANAGING THE WAITING LIST**

### **4-II.A. OVERVIEW**

The SHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how the SHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

#### **4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

The SHA's HCV waiting list must be organized in such a manner to allow the SHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list must contain the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any targeted or local preference; and
- Racial or ethnic designation of the head of household.

HUD requires the SHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. SHA is permitted, but not required, to maintain a separate waiting list for each county or municipality served.

##### SHA Policy

The SHA will maintain separate waiting lists for each PBV project and each HCV jurisdiction:

1. Spokane/Lincoln
2. Pend Oreille/Stevens
3. Ferry
4. Whitman

And for the following special funding categories:

1. Family Unification Program (FUP)
2. Veterans Affairs Supportive Housing (VASH)
3. Mainstream Voucher Program

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the SHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

A family's decision to apply for, receive or refuse other housing assistance must not affect the family's placement on the HCV waiting list or any preferences for which the family may qualify.

##### SHA Policy

The SHA will not merge the HCV waiting list with the waiting list for any other program the SHA operates.

#### **4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]**

##### **Closing the Waiting List**

The SHA will close tenant-based waiting lists when the estimated waiting period for housing assistance for applicants on the list reaches 12 months for the most current applicants.

The tenant-based waiting list is always open to an otherwise eligible applicant that:

1. Is a Project-Based Voucher household living in a project-based voucher contract unit approved by the SHA (who has reached the end of their first year of participation and who has requested a tenant-based voucher);
2. Is eligible as set forth by a HUD award of funding to the SHA for one of the following Targeted categories of HCV eligible families (see Section 4-III.B Targeted Funding):
  - a. Family Unification Program (FUP) Vouchers
  - b. Veterans Affairs Supported Housing (VASH)
  - c. Mainstream Voucher Program
3. Is eligible as set forth by the SHA's Local Preferences, Categories 1-6 ONLY (see Section 4-III.C Local Preferences).

The project-based voucher site-based waiting lists are always open.

#### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the SHA publishes a notice in local newspaper(s) of general circulation, minority media and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply and where and when applications will be received.

##### SHA Policy

- The SHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.
- The SHA will give public notice by publishing in the local paper, through minority media and other suitable means, including the SHA website and notification to community partners.

#### **4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]**

The SHA must conduct outreach as necessary to ensure that the SHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires the SHA to admit a specified percentage of extremely-low income families to the program (see Chapter 4, Part III), the SHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

SHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations;
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program; and
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class.

SHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers;
- Developing informational materials and flyers to distribute to other agencies;
- Providing application access to other public and private agencies that serve the low income population; or
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities.

#### SHA Policy

The SHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the SHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

#### SHA Policy

While the family is on the waiting list, the family must immediately inform the SHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing unless a reasonable accommodation has been granted to accommodate a disability.

### **4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]**

HUD requires the SHA to establish policies to use when removing applicant names from the waiting list.

#### **Purging the Waiting List**

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a SHA request for information or updates and the SHA determines that the family did not respond because of the family member's disability, the SHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

#### SHA Policy

- The waiting list will be updated regularly to ensure that all applicants and applicant information is current and timely.
- To update the waiting list, the SHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in and to qualify for, the program. This update request will be sent to the last address that the SHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

- The family's response must be in writing and may be delivered in person, by mail or by fax. Responses should be postmarked or received by the SHA not later than 10 business days from the date of the SHA letter.
- If the family fails to respond within 10 business days, the family will be removed from the waiting list without further notice.
- If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.
- If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 10 business days to respond from the date the letter was re-sent.
- If a family is removed from the waiting list for failure to respond, the SHA may reinstate the family if it is determined that the lack of response was due to SHA error or to circumstances beyond the family's control or as a reasonable accommodation.

#### **Removal from the Waiting List**

##### SHA Policy

- If at any time an applicant family is on the waiting list and the SHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.
- If a family is removed from the waiting list because the SHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the SHA's decision (see Chapter 16) [24 CFR 982.201(f)].

### **PART III: SELECTION FOR HCV ASSISTANCE**

#### **4-III.A. OVERVIEW**

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families are selected from the waiting list depends on the selection method chosen by the SHA and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected from the waiting list.

The SHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the SHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

#### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

##### **Special Admissions [24 CFR 982.203]**

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the SHA may admit such families whether or not they are on the waiting list and, if they are on the waiting list, without considering the family's position on the waiting list. These families are considered non-waiting list selections. The SHA must maintain records showing that such families were admitted with special program funding.

#### **Targeted Funding [24 CFR 982.204(e)]**

HUD may award SHA funding for a specified category of families on the waiting list. The SHA must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the SHA may skip families on the waiting list that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

##### SHA Policy

The SHA administers the following types of targeted funding:

***Non-Elderly Disabled (NED) Vouchers*** – Vouchers available for families whose head or co-head is disabled but not elderly, at the time they reach the top of the waiting list.

***Family Unification Program (FUP) Vouchers*** – Vouchers are available for two different populations:

1. Families for whom the lack of adequate housing is a primary factor in:
  - a. The imminent placement of the family's child or children in out-of-home care, or
  - b. The delay in the discharge of the child or children to the family from out-of-home care
2. Youth 18-24 years of age, who have left foster care at age 16 or older, or will leave foster care within 90 days, and is homeless or is at risk of becoming homeless.

There is no time limit on Family Unification vouchers for families, however, FUP vouchers for youth have a time limitation of 36 months.

Eligible households for the Family Unification Program must be referred by the Department of Social and Health Services', Department of Children and Family Services.

***Veterans' Affairs Supported Housing (VASH) Vouchers*** – Vouchers available for homeless veterans referred by the Department of Veterans' Affairs (VA).

***Section 811 Vouchers (Mainstream Voucher Program)***—Vouchers available for households with one or more non-elderly persons with disabilities. This program is operated by SHA in multiple jurisdictions through Interlocal Agreements with 19 other public housing authorities in the state of Washington. The participant selection method for this targeted funding is outlined in 4-III.C.

In accordance with the NOFA requirements, Mainstream Targeted Vouchers will adhere to the following preferences for admission:

1. Individuals being released from institutional or other segregated settings. These include, but are not limited to: (1) congregate settings populated exclusively or primarily with individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy; policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.
2. Individuals at serious risk of institutionalization: This includes an individual with a disability who as a result of a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution. This includes individuals experiencing lack of access to supportive services for independent living, long waiting lists for or lack of access to housing combined with community based services, individuals currently living under poor housing conditions or homeless with barriers to geographic mobility, and/or currently living alone but requiring supportive services for independent living. A person cannot be considered at serious risk of institutionalization unless that person has a disability. An individual may be designated as at serious risk of institutionalization either by a health and human services agency, by a community-based organization, or by self-identification.
3. An individual that is homeless: Homeless means:
  - a) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
    - (i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
    - (ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state or local government programs for low income individuals); or
    - (iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
  - b) An individual or family who will imminently lose their primary nighttime residence, provided that:

- (i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - (ii) No subsequent residence has been identified; and
  - (iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;
- c) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition but who:
- (i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1785(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - (ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - (iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of application for homeless assistance; and
  - (iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addition; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Diploma (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- d) Any individual or family who:
- i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the

- individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary residence;
- ii) Has no other residence; and
    - i) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.
4. Any individual or family at risk of becoming homeless, which means:
- a) Does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph a) of the "Homeless: definition in this section; and
  - b) Meets one of the following conditions:
    - (i) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homeless prevention assistance;
    - (ii) Is living in the home of another because of economic hardship;
    - (iii) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;
    - (iv) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, state, or local government programs for low-income individuals;
    - (v) Lives in a Single Room Occupancy (SRO) or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;
    - (vi) Is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution; or
    - (vii) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

### **Regular HCV Funding**

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

### **4-III.C. SELECTION METHOD**

The SHA must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the SHA will use [24 CFR 982.202(d)].

## Local Preferences [24 CFR 982.207; HCV p. 4-16]

The SHA is permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the SHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the SHA plan and the consolidated plan and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

### SHA Policy

The SHA will use the following local preferences:

1. Any family that has been terminated from its HCV or other tenant-based rental assistance program due to insufficient program funding.
2. Applicants who are currently residing in good standing in a SHA owned housing unit who are required to move and cannot be placed in another unit.
3. Any family residing in SHA Public Housing who are affected by a RAD conversion and who meet the eligibility requirements of the HCV program.
4. Applicants who have resided in SHA Public Housing for at least one year, who are in good standing and who qualify for the Section 8 Homeownership Program.
5. Applicants who are currently in a Project-Based Voucher household living in a project-based voucher contract unit approved by the SHA (who has reached the end of their first year of participation and who have requested a tenant-based voucher). Some families may qualify for an exception which allows for an earlier conversion to a tenant based voucher; for information on this exception, please refer to the section of SHA's Administrative Plan within Chapter 18-VI.E Moves, entitled, "\*Exception" located under the heading "Choice Mobility".
6. Any participant family that has successfully completed a short term housing assistance program administered by SHA in partnership with another local agency.
7. Family Unification Program (FUP) participants who have: 1) successfully participated in the FUP for at least one year; and 2) had their Department of Social and Health Services (DSHS), Children's Administration, dependency case closed for at least one year. Once a FUP household has been identified as having met these criteria, the SHA reserves the right to transfer up to five households per month to a regular voucher (not special program) in order to free up the FUP voucher for a new FUP referral from DSHS. The order of transfer will start with FUP households that have had their dependency cases closed for the longest period.
8. Referral Voucher Program (RVP), the SHA will issue up to 50 vouchers per month (turnover and/or newly awarded vouchers) through SHA's RVP. RVP vouchers are awarded through a Request for Proposal (RFP) process to non-profit and government led supportive service agencies. Partners are required to enter into a Memorandum of Agreement (MOA) that defines the target population and the services required to be offered to the participant by the partner agency. Participants will not be required to participate in the services; however, the partner agency must offer the services outlined on the MOA.

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9. A family whose head, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.
10. A family whose head, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

~~11. Applicant families with dependent children.~~

- ~~12-11.~~ A family that includes at least one household member who is over the age of 18, but not more than 62 years of age, who has a disability, and who is transitioning out of institutional and other segregated settings, at serious risk of institutionalization, homeless, or at risk of becoming homeless.

Applicants who are admitted with Local Preferences are identified by codes in the automated system and are not maintained on separate lists. All applicants with a Local Preference will be placed on the waiting list with the highest priority. Those in category 1 –6 will be given 100 points (first priority) and those in category 7-8 will be given 90 points (second priority). Those in category 9-12 will receive 80 points (third priority).

Applicant families without dependent children and other singles that are not elderly or disabled will be given no preference and will not receive housing assistance unless all other family types have been assisted, regardless of date and time of application.

**Project Based Vouchers:**

Project Based Vouchers site-based waiting lists are always open and each project adopts its own specific preferences. These preferences are outlined in the project’s management plan.

**Mainstream Program Vouchers**

SHA’s Mainstream Program is an award of HUD funding that is targeted specifically for households with at least one non-elderly household member with a disability. The funding was awarded to a collaborative of 21 public housing authorities located in the State of Washington, including SHA. Mainstream agency partners include:

- Asotin County Housing Authority
- Bellingham/Whatcom County Housing Authority
- Bremerton Housing Authority
- Housing Authority of Chelan County and the City of Wenatchee
- Columbia Gorge Housing Authority
- Housing Authority of Grant County
- Housing Authority of Grays Harbor County
- Housing Authority of Island County
- Housing Authority of Skagit County
- Housing Authority of the City of Kennewick
- Housing Authority of the City of Pasco & Franklin County

Housing Authority of the City of Yakima  
Housing Opportunities of Southwest Washington  
Kelso Housing Authority  
Okanogan County Housing Authority  
Peninsula Housing Authority  
Renton Housing Authority  
Tacoma Housing Authority  
Walla Walla Housing Authority

Each partner agency is allocated a specific portion of the total funding award through an Interlocal Agreement. Each partner will select Mainstream Program participants from their Housing Choice Voucher waiting list in accordance with their adopted Housing Choice Voucher Administrative Plan.

Each partner agency will be required to:

1. Enter into an Interlocal Agreement with Spokane Housing Authority outlining the specific terms and conditions under which the Mainstream Program will be administered, including the roles and responsibilities of both SHA and the partner agency (See Example in Appendix 4-2).
2. Provide a copy of their board-approved Housing Choice Voucher Administrative Plan in effect at the time of the Interlocal Agreement and provide a copy of any subsequent revisions to said plan within 10 days of the board-approved revisions.
3. Amend their Housing Choice Voucher Administrative Plan within 90 days of the effective date of the Interlocal Agreement to include the following provisions that are required to address selection of participants for the Targeted Funding for the Mainstream Program:
  - *The PHA will provide an admission preference for "Mainstream Voucher Targeted Funding" for non-elderly persons with disabilities transitioning out of institutional and other segregated settings, at serious risk of institutionalization, homeless, or at risk of becoming homeless. Said preference must be documented by a reliable source (i.e., institution, medical or behavioral health provider, Department of Social and Health Services, or supportive services partner).*
  - *The PHA will not require Mainstream Program participants to utilize support services as a condition for participation. Moreover, individuals with disabilities are not required to accept any services as a condition of housing assistance. Individuals may receive services from any provider of their choosing or choose not to participate in any services.*
  - *The PHA must allow eligible applicants to apply for the program directly through the PHA (if their waiting list is open) and cannot limit vouchers only to those being referred or approved through a supportive services partner agency. The*

*PHA cannot give preference to referred persons over applicants who apply directly through the PHA for the program.*

4. Provide SHA with adequate documentation to verify that the participant referred to SHA for participation in the Mainstream Program has been selected in the order required by the PHA's Administrative Plan (i.e, they are next on the waiting list).
5. Make the applicant or participant file available upon request for quality control file audits required by the Section 8 Management Assessment Program (SEMAP).
6. Adhere to SHA Mainstream Voucher Program instructions for participant referral and program administration (see Appendix 4-3).

#### **Income Targeting Requirement [24 CFR 982.201(b)(2)]**

HUD requires that extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during the SHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher. To ensure this requirement is met, the SHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low-income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

##### SHA Policy

The SHA will monitor progress in meeting the income targeting requirement throughout the fiscal year. Record of monthly income targeting levels will be maintained on the monthly Voucher Utilization Report. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

#### **Order of Selection**

The SHA system of preferences may select families based on local preferences according to the date and time of application.[24 CFR 982.207(c)]. If the SHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

##### SHA Policy

Families will be selected from the waiting list based on the targeted funding or local selection preference(s) for which they qualify and in accordance with the SHA's hierarchy of preferences. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the SHA. Documentation will be maintained by the SHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the SHA does not have to ask higher

placed families each time targeted selections are made.

If SHA determines that it must freeze voucher issuance based upon appropriation shortfall or over-leasing of vouchers, SHA's policy is to freeze applicants on the waiting list with lowest local preference priority 1<sup>st</sup>, assuring proper order of selection is consistent with the order of call up.

#### **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, the SHA must notify the family.

##### SHA Policy

The SHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

- Date, time and location of the scheduled application interview, including any procedures for rescheduling the interview;
- Who is required to attend the interview; and
- All documents that must be provided at the interview, including information about what constitutes acceptable documentation.

If a notification letter is returned to the SHA with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address.

#### **4-III.E. THE APPLICATION INTERVIEW**

HUD recommends that the SHA obtain the information and documentation needed to make an eligibility determination through a face-to-face interview with a SHA representative [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the SHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the SHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

##### SHA Policy

- Families selected from the waiting list are required to participate in an eligibility interview.
- The head of household and the spouse/cohead will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/cohead may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the SHA.
- The head of household or spouse/cohead must provide acceptable documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity.) If the family representative does not provide the required documentation

at the time of the interview, he or she will be required to provide it within 10 business days.

- Pending disclosure and documentation of social security numbers, the SHA will allow the family to retain its place on the waiting list for **30 calendar days**. If not all household members have disclosed their SSNs at the next time the SHA is issuing vouchers, the SHA will issue a voucher to the next eligible applicant family on the waiting list.
- The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures and submitting required documentation. If any materials are missing, the SHA will provide the family with a written list of items that must be submitted.
- Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).
- An advocate, interpreter or other assistant may assist the family with the application and the interview process.
- Interviews will be conducted in English. For limited English proficient (LEP) applicants, the SHA will provide translation services in accordance with the SHA's LEP plan.
- If the family is unable to attend a scheduled interview, the family should contact the SHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the SHA will offer one "second chance," if requested by the family within 60 calendar days. Applicants who fail to attend a scheduled interview or who do not request the "second chance" within 60 calendar days will be denied assistance based on the family's failure to supply information needed to determine eligibility.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

The SHA must verify all information provided by the family (see Chapter 7). Based on verified information, the SHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted funding admission or selection preference that affected the order in which the family was selected from the waiting list.

##### SHA Policy

- If the SHA determines that the family is ineligible, the SHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review (Chapter 16).

- If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The SHA will notify the family in writing that it has been returned to the waiting list and will specify the reasons for it.
- If the SHA determines that the family is eligible to receive assistance, the SHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

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

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements and equal opportunity requirements.

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

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

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

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

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

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

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

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

## **PART I: GENERAL REQUIREMENTS**

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

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### SHA Policy

The SHA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance. The Executive Director will have the discretion to determine the level of PBV.

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 SHA is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the SHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the SHA has vouchers available for project-basing [FR Notice 1/18/17]

### **Additional Project-Based Units [FR Notice 1/18/17]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

#### PHA Policy

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

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

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

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

- The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either:
  - Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or
  - Was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)
  - Received assistance under the Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978)

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

### PHA Policy

SHA has elected to project-base units under the RAD program. These units, not subject to the PBV cap are as follows:

WA055000001-Parsons Hotel	50 Units Elderly/Disabled	Converted 2017
WA055000002-Spokane HA	74 Units Scattered Site PH	Sch. Conv 2018

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

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

### SHA Policy

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

## **17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance

and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds or funds available from other sources. SHA may not use voucher program funds to cover relocation costs, except that it may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

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

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

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

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

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

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

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

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

- SHA request for PBV Proposals. The SHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the SHA request. The SHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The SHA may select proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program or supportive services program that requires competitive selection of proposals (e.g., HOME

and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

- **Units Selected Non-Competitively [FR Notice 1/18/17]**

For certain public housing projects where the PHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the PHA may select a project without following one of the two processes above.

PHA Policy

SHA has elected to project-base units under the RAD program. The RAD units, not subject to competition because the PHA has an ownership interest or control and has spent a minimum amount per unit on rehabilitation are as follows:

WA055000001-Parsons Hotel	50 Units Elderly/Disabled	Converted 2017
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### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

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

SHA Policy

- *SHA Request for Proposals for Rehabilitated and Newly Constructed Units*
  - The SHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the local newspaper for at least two days published at least one week apart
  - In addition, the SHA will post the RFP and proposal submission and rating and ranking procedures on its website.
  - In order for the proposal to be considered, the owner must submit the proposal to the SHA 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 SHA 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 SHA goal of deconcentrating poverty and expanding housing and economic opportunities, and serving locally identified selection preferences (i.e., homeless, elderly, disabled, families with children, etc.).

- The extent to which services for special populations are provided on site or in the immediate area for occupants of the property.
  -
- *SHA Requests for Proposals for Existing Housing Units*
  - The SHA will advertise its request for proposals (RFP) for existing housing units in the local newspaper for at least two days published at least one week apart.
  - In addition, the SHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.
  - SHA will rate and rank proposals for existing housing units using the following criteria:
    - Experience as an owner in the housing choice voucher program and owner compliance with the owner's obligations under the program;
    - Extent to which the project furthers the SHA goal of deconcentrating poverty, expanding housing and economic opportunities, and serving locally identified selection preferences (i.e., homeless, elderly, disabled, families with children, etc.).
    - The 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.
- *SHA Selection of Proposals Subject to a Previous Competition under a Federal, State or Local Housing Assistance Program*
  - The SHA 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 the SHA 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 SHA will evaluate each proposal on its merits using the following factors:
    - Extent to which the project furthers the SHA goal of deconcentrating poverty and expanding housing and economic opportunities, and serving locally identified selection preferences (i.e., homeless, elderly, disabled, families with children, etc.); 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, Promise Zone, Economic Community or Renewal Community.

## **SHA-Owned Units [24 CFR 983.51(e), 983.59, Notice PIH 2015-05 and FR Notice 1/18/17]**

SHA-owned units may be assisted under the PBV program only if the HUD field office reviews the selection process and determines that the SHA-owned units were appropriately selected based on the selection procedures specified in the SHA administrative plan. If the SHA selects a proposal for housing that is owned or controlled by the SHA, the SHA will have the HUD field office review the SHA proposal selection process and contract with an independent entity for specific functions with respect to rent reasonableness determinations and inspections.

In the case of SHA-owned units, the initial contract rent must be approved by an independent entity. In addition, housing quality standards inspections must be conducted by an independent entity.

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

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

The SHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

### SHA Policy

- Within 15 business days of the SHA making the selection, the SHA will notify the selected owner in writing of the owner's selection for the PBV program. The SHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.
- The SHA will make available to any interested party its rating and ranking sheets and documents that identify the SHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The SHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.
- The SHA will make these documents available for review at the SHA during normal business hours. The cost for reproduction of allowable documents will be \$.15 per page.

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

The SHA 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 SHA selection, the units substantially comply with HQS. Units for which new

construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

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

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

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

The SHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the SHA may not attach or pay PBV assistance for a unit occupied by an owner and the SHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

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

A SHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance; or
- A unit with any other duplicative federal, state or local housing subsidy, as determined by HUD or the SHA in accordance with HUD requirements.

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

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

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

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

The SHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, the SHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD or a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

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

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

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

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

#### **Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]**

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

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

For these projects, the project cap is the great of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

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

### *Supportive Services*

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the support services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

### SHA Policy

- Elderly may live in excepted units without any requirement for them to receive supportive services.
- .
- For a project to qualify for excepted units, it must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the support services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. The following types of services will be offered depending on the needs of the family:
  - Transportation for activities such as grocery shopping, attending medical and dental appointments;
  - Supervised taking of medications;
  - Treatment for drug rehabilitation in the case of current abusers;
  - Treatment for alcohol addiction in the case of current abusers;
  - Training in housekeeping and homemaking activities;
  - Family budgeting
  - Child care;
  - Parenting skills;

- Computer labs; and
- Work skills development and job training.
- Service providers and/or the owner will be required to submit a quarterly report to the SHA of the families that are receiving services. The specific services obligation and duration of services to be provided to each participant will be stated in the HAP contract. SHA staff will review these reports annually to determine compliance with supportive service requirements.

**Projects not Subject to a Project Cap [FR Notice 1/18/17]**

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

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

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

PHA Policy

SHA has elected to project-base units under the RAD program. These units, not subject to the PBV cap are as follows:

WA055000001-Parsons Hotel	50 Units Elderly/Disabled	Converted 2017
WA055000002–Spokane HA	74 Units Scattered Site PH	Sch. Conv 2018

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

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

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

### SHA Policy:

The SHA will not impose any further cap on the number of PBV units assisted per project.

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

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

The SHA 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 SHA 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 SHA Plan under 24 CFR 903 and the SHA administrative plan.

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

### SHA Policy

- It is the SHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the SHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.
- However, the SHA will grant exceptions to the 20 percent standard where the SHA 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, Promise Zone, Economic Community or Renewal Community;
  - A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
  - A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local or federal dollars invested in the area;
  - A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
  - A census tract where there has been an overall decline in the poverty rate within the past five years; or
  - A census tract where there are meaningful opportunities for educational and economic advancement.

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

The SHA 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 SHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

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

The SHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The SHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The SHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the SHA, the owner and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

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

## **PART III: DWELLING UNITS**

### **17-III.A. OVERVIEW**

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

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

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

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

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

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

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

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The SHA must ensure that the percentage of accessible dwelling units complies with the

requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

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

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

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

The SHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the SHA 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 SHA may not execute the HAP contract until the units fully comply with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.

#### **Pre-HAP Contract Inspections [24 CFR 983.103(b); FR Notice 1/18/17]**

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

##### SHA Policy

The SHA will not enter into a PBV HAP contract until all units that will be under contract fully comply with HQS unless approved by the HAP Director or the Executive Director.

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

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

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

At least every 24 months during the term of the HAP contract, , the SHA must inspect a random sample consisting of 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

##### PHA Policy

The SHA will inspect all PBV contract units at least once every 24 months to determine if the contract units and the premises are maintained in accordance with HQS.

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

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

The SHA 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 SHA supervisory quality control HQS inspections, the SHA should include a representative sample of both tenant-based and project-based units.

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

In the case of SHA-owned units, the inspections must be performed by an independent agency designated by the SHA. The independent entity must furnish a copy of each inspection report to the SHA. The SHA 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 SHA.

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

### **17-IV.A. OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

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

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

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

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

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

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance or equipment to be supplied by the owner without charges in addition to the rent;

- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture or design over and above HQS.

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

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

#### SHA Policy

The SHA will enter into the Agreement with the owner within 30 calendar days of receiving both environmental approval and notice that subsidy layering requirements have been met and before construction or rehabilitation work is started.

### **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

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

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

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

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

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

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

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

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

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

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

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

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

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

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

#### SHA Policy

The SHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The SHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

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

Upon notice from the owner that the housing is completed, the SHA 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 SHA 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 SHA must not enter into the HAP contract.

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

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

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

The SHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

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

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known) and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families(elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

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

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

### SHA Policy

- For existing housing, the HAP contract will be executed within 30 business days of the SHA determining that all units pass HQS.
- For rehabilitated or newly constructed housing, the HAP contract will be executed within 30 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS and the owner has submitted all required evidence of completion.

### **Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]**

The SHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### SHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis but will not exceed 20 years.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the SHA may extend the term of the contract for an additional term of up to 20 years if the SHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### SHA Policy

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

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

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

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

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

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the SHA 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 SHA. In this case, families living in the contract units must be offered tenant-based assistance.

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

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

## **Remedies for HQS Violations [24 CFR 983. 208(b)]**

The SHA 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 SHA determines that a contract does not comply with HQS, the SHA 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.

### SHA Policy

The SHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

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

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

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

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

The SHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

### SHA Policy

The SHA will consider adding contract units to the HAP contract when the SHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

## **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]**

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

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

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

#### **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]**

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

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

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

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

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment and utilities specified in the HAP contract with the SHA 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 SHA 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.

#### SHA Policy

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

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

At the discretion of the SHA, the HAP contract may provide for vacancy payments to the owner for a SHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the SHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

#### SHA Policy

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

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

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

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

The SHA may select families for the PBV program from those who are participants in the SHA'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 SHA, 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 SHA's collection and use of family

information regarding income, expenses and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### SHA Policy

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

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

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the SHA 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 project waiting list. Once the family's continued eligibility is determined (the SHA 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 for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

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

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

The SHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The SHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the SHA. If the SHA chooses to offer a separate waiting list for PBV assistance, the SHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

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

#### SHA Policy

- SHA will maintain separate waiting lists for PBV units in each PBV property or project under contract. Preferences will be established for occupancy of particular units. However, these preferences must be outlined in the project's management plan and HAP contract.
- SHA will offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting lists for PBV assistance.
- SHA will accept referrals from PBV projects for placement on SHA's PBV Waiting Lists.
- If the PBV project chooses, or is required, to use coordinated entry as its source of referrals, all families who wish to be considered for tenancy of that project will need to be assessed through coordinated entry and placed on coordinated

entry's master list. SHA will then select applicants from coordinated entry's master list in order of their prioritization on that list and then placed on a PBV waiting list for that particular project in the order that they were taken off of the master list utilized by coordinated entry prior to being referred to the property for tenancy.

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

Applicants who will occupy units with PBV assistance must be selected by SHA from the PBV waiting list for the particular property or project at which the open unit is located. In selecting families for assistance, SHA may give preference to disabled families who need services offered at a particular project.

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

At least 75 percent of the families admitted to the SHA's tenant and project-based voucher programs during the SHA 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, SHA must first consider families who require such features.

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

The SHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The SHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

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

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

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

#### SHA Policy

##### Permanent Supportive Housing with PBV

- The SHA has committed project-based vouchers to more than 200 permanent supportive housing units. Dedicated PBV units in these projects are specifically designated for households meeting the definition of homeless or chronically homeless (individuals or families). The goal of the PSH with PBV program is to provide permanent affordable housing for homeless individuals and families while

insuring them access to supportive services to maintain long-term housing stability for the household.

- Projects allocated PBV that are specifically designated PSH, will be required to provide a selection preference for homeless or chronically homeless households. In addition, if any state or local funding source requires admission based on the use of coordinated entry, or if the PBV project chooses to utilize coordinated entry as their preferred referral source regardless of funding requirements, tenant selection will be based only on the coordinated entry referral and the owner's screening criteria. However, all PBV projects specifically designated as PSH that have an initial contract effective date that falls after 12/31/2018 will be required to use coordinated entry as its primary referral source.

Other

- SHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, elderly families or units with supportive services, or mobility impaired persons for accessible units).

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

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

The SHA 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 (if the waiting list is open);
- 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 SHA's selection policy; or
- 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 SHA 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 SHA must provide a briefing packet that explains how the SHA 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 SHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see

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

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

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant and the SHA 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 only to eligible families that are selected and referred by SHA from SHA's PBV waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the SHA's subsidy standards.

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

The owner must promptly notify the SHA of any vacancy or expected vacancy in a contract unit. The SHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### SHA Policy

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

#### SHA Policy

- If any contract units have been vacant for 120 days, the SHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The SHA 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 SHA's notice.
- The SHA, at its discretion, may consider the circumstances of the vacancy and may elect to continue assisting the unit.

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

### **SHA Responsibility**

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

#### SHA Policy

- The SHA will not conduct screening only as it relates to program eligibility and will not screen to determine a PBV applicant family's suitability for tenancy.

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

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

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

#### SHA Policy

- The SHA 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 SHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Owner Responsibility**

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

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

## **PART VII: OCCUPANCY**

## **17-VII.A. OVERVIEW**

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

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

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

### **Form of Lease [24 CFR 983.256(b)]**

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

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

#### SHA Policy

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

### **Lease Requirements [24 CFR 983.256(c)]**

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

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

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the SHA (the names of family members and any SHA-approved live-in aide);

- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

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

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

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

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

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

The owner must notify the SHA 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 SHA and in accordance with the terms of the lease relating to its amendment. The SHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason or a desire to use the unit for personal or family use or other non-residential purpose.

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

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by SHA 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. SHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180

days following the date of the last housing assistance payment by the SHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

#### SHA Policy

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

### **Security Deposits [24 CFR 983.259]**

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

#### SHA Policy

- The SHA will allow the owner to collect a security deposit amount the owner determines is appropriate; however, may not collect the "last month rent."

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

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

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

### **17-VII.C. MOVES**

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

If the SHA and/or Owner determines that a family is occupying a wrong size unit, based on the SHA'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 Owner must promptly notify the family and the SHA of this determination, and the Owner must offer the family the opportunity to receive continued housing assistance in another unit.

#### SHA Policy

- The Owner will notify the family and the SHA of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the determination. The SHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:
  - PBV assistance in the same building or project; or
  - Tenant-based voucher assistance.

If the SHA offers the family a tenant-based voucher, the SHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the

term of the family's voucher (including any extension granted by the SHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the SHA 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 SHA, or both, the SHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the SHA and remove the unit from the HAP contract.

#### SHA Policy

- When the SHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the SHA will terminate the housing assistance payments at the expiration of this 30-day period.
- The SHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness or other medical emergency of a family member.

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

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the SHA. If the family wishes to move with continued tenant-based assistance, the family must contact the SHA 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 SHA 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 SHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the lease in accordance with these requirements, is offered tenant-based assistance, does not move out of the project-based unit, and their tenant-based voucher expires, the family must continue to reside in the project-based unit for another year.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance. (For information regarding an exception to this policy, please refer to the section of SHA's Administrative Plan within Chapter 18-VI.E Moves, entitled, "\*Exception" located under the heading "Choice Mobility".)

#### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

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

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

#### SHA Policy

- When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, the SHA will provide several options for continued assistance.
- The SHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the SHA has PBV units. The SHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.
- If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to tenant-based rental assistance (HCV). Such a decision will be made by the SHA based on the availability of tenant-based vouchers. Such families must be selected from the waiting list for the applicable program.
- If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the SHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the SHA has PBV units. The SHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

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

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

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

For these projects, the project cap is the great of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received supportive services as defined by the SHA and successfully completes the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the family fails to complete the supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying hap on behalf of the family.

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

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

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

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

#### SHA Policy

- The SHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change beyond the remaining family members’ control.
- In all other cases the SHA will provide written notice to the family and the owner within days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the SHA will terminate the housing assistance payments at the expiration of the 30 day period.
- The SHA may make exceptions to this 30-day period if needed for reasons beyond the family’s control such as death, serious illness or other medical emergency of a family member.

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

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

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

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

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

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

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

### **Certain Tax Credit Units [24 CFR 983.301(c),]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

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

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

### ***Definitions***

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

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

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

The SHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the SHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

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

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

#### SHA Policy

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

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

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

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

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

#### SHA Policy

- Upon written request by the owner, the SHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP or redetermination of rent. The owner must explain the need to use the previous

FMRs or utility allowances and include documentation in support of the request. The SHA will review and make a decision based on the circumstances and merit of each request.

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

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

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs (either by HUD-designation or because the PHA requested HUD approval to use SAFMRs) may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and the PHA administrative plan policy, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

#### SHA Policy

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

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

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

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

If an owner wishes to request an increase in the rent to owner from the SHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the SHA. The SHA 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).

#### SHA Policy

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

The SHA 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, except where the SHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

NOTE: A decrease the FMR of 10% or more requires a review of the rent reasonableness of the contract rent (60 days prior to the annual anniversary date). If the review determines that the rent is no longer reasonable, the contract rent must be decreased regardless of whether the owner requested a rent adjustment. If the rent review determines that the rent remains reasonable, no decrease is required.

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

The rent to owner is redetermined by written notice by the SHA to the owner specifying the amount of the redetermined rent. The SHA 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.

#### SHA Policy

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

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

For SHA-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. The SHA 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 SHA, except where the SHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### **When Rent Reasonable Determinations Are Required**

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

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The SHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

## **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the SHA 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 SHA. The comparability analysis may be performed by SHA 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.

### **SHA-Owned Units**

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

### **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 SHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

## **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

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

### **Other Subsidy [24 CFR 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding. For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

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

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;

- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### ***Combining Subsidy***

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

### **Rent Control [24 CFR 983.305]**

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

## **PART IX: PAYMENTS TO OWNER**

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

During the term of the HAP contract, the SHA 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 SHA agree on a later date.

Except for discretionary vacancy payments, the SHA 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 SHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

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

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

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

#### SHA Policy

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

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

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

#### SHA Policy

- If an owner's HAP contract calls for vacancy payments to be made and the owner wishes to receive vacancy payments, the owner must have properly notified the SHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.
- In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the SHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the SHA within 10 business days of the SHA's request, no vacancy payments will be made.

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

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the SHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the SHA 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 SHA 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 SHA. The owner must immediately return any excess payment to the tenant.

#### **Tenant and SHA 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 SHA.

Likewise, the SHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The SHA is not responsible for paying tenant rent or any other claim by the owner, including damage to the unit. The SHA 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 SHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities and the tenant rent to the owner must be zero.

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

#### SHA Policy

- The SHA will make utility reimbursements to the utility supplier on behalf of the family.

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

### **Meals and Supportive Services**

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

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

### **Other Charges by Owner**

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

## Chapter 18

### PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

#### INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

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

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

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

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

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

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

#### PART I: GENERAL REQUIREMENTS

##### 18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order 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:

- Preserve and improve public and other assisted housing.
- 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.

- 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.
- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

### **18-I.B. APPLICABLE REGULATIONS**

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice PIH 2012-32, REV-2 (issued June 15, 2015) and Notice PIH 2012-32, REV-3 (issued January 12, 2017).

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), and Division L, Title II, Section 237 of the Consolidated Appropriations Act (Public Law 114-113, enacted December 18, 2015) collectively, the "RAD Statute." Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. Notice PIH 2012-32, REV-3 is applicable to projects converting assistance through RAD, including those where a CHAP has already been issued, upon the expiration of the 30-day comment period after publication of the notice. Notice PIH 2012-32, REV-3 was published January 12, 2017.

- Notice PIH 2012-32, REV-2, RAD – Final Implementation, REV-2 is applicable to projects converting assistance through RAD upon the expiration of the 30-day comment period after publication of the Notice. PIH Notice 2012-32, REV-2 was published June 15, 2015.
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
  - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
  - This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- RAD FAQs (<http://www.radresource.net/search.cfm>)

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

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

#### PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

### **18-I.D. RELOCATION REQUIREMENTS FOR SHA RAD PROJECTS**

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 Notice PIH 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, amended (URA),

although not all relocation under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.

The following relocation requirements apply to SHA's specific RAD Conversations:

(1) Parsons Apartments (Parsons Hotel – WA055000001)

The Parsons Apartments applied for conversion prior to November 10, 2016 and is therefore subject to Notice PIH 2014-17. The PHA was not required to have a written relocation plan, however, HUD strongly encouraged a written plan and SHA complied with this request. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan and the Parsons Apartments Relocation Plan can be obtained upon request.

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 developing 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.

(2) (Spokane HA – Project WA055000002)

SHA's Scattered Site Public Housing (74 units comprised of single family homes and duplexes) will be converted after November 10, 2016 and is therefore subject to PIH Notice 2016-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.

The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.

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.

If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.

Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:

- Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
- The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
- Income limit eligibility requirements associated with the LIHTC program or another program; and
- Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.

Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.

Alternative housing options may involve a variety of housing options, including but not limited to:

- Transfers to public housing
- Admission to other affordable housing properties subject to the applicable program rules
- Housing choice voucher (HCV) assistance
- Homeownership programs subject to the applicable program rules
- Other options identified by the PHA

### **18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; Notice PIH 2012-32, REV-3]**

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. 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.

## **PART II: PBV PROJECT SELECTION**

### **18-II.A. OVERVIEW**

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2012-32, REV-3. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

### **18-II.B. OWNERSHIP AND CONTROL** [Notice PIH 2012-32, REV-3]

- (1) Applicable to projects converting assistance through RAD where a CHAP was issued prior to REV-3 of Notice 2012-32 (Parsons Apartments)

During both the initial term and renewal terms of the HAP contract, 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, beneficial, and other interests of the property; or
- A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

- (2) Applicable to projects converting assistance through RAD, including those where a CHAP has already been issued, upon the expiration of the 30-day comment period after publication of REV-3 (January 12, 2017) of the Notice PIH 2012-32 (Spokane HA Scattered Sites)

Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or non-profit entity. The requirement for a public or non-profit entity is satisfied if a public or non-profit entity (or entities), directly or through a wholly-owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.

If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:

- The PHA, or an affiliate under its sole control, is the general partner or managing member;
- The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
- The PHA retains control over leasing the property and determining program eligibility;
- The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;
- Other means that HUD finds acceptable

**18-II.C. PHA-OWNED UNITS [24 CFR 983.59; Notice PIH 2012-32, REV-3; FR Notice 1/18/17]**

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

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

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

**18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2012-32, REV-3]**

In the case of a PHA 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 at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

- Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA close-out reserve). Any funds not needed for public housing close-out costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or
- Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

In the case where the PHA will continue to maintain other units in its inventory under a 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 Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

### **18-II.E. PBV PERCENTAGE LIMITATION [Notice PIH 2012-32, REV-3]**

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

#### **(1) 50% Project Cap [PIH 2012-32(HA), REV-2] - Applicable to Parsons Apartments Only**

In general, the PHA may not 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 50% of the number of dwelling units (assisted or unassisted in the project).

Exceptions to 50 Percent per Project Cap [24 CFR 983.56(b); Notice PIH 2012-32, REV-2]

PHAs may exceed the 50 percent cap in excepted units in a project occupied by the elderly and/or disabled families or in cases where families occupy the project will receive supportive services.

#### **SHA Policy**

RAD units at the Parsons Apartments are designated elderly/disabled units only and therefore meet the exception to the 50% project cap. SHA will not require families living in these excepted units to receive supportive services.

#### **(2) Applicable to Spokane HA Scattered Sites [Notice PIH 2012-32, REV-3]**

There is no cap on the number of units that may receive PBV assistance in a project for this RAD conversion.

### **18-II.F. SITE SELECTION STANDARDS [Notice PIH 2012-32, REV-3; Notice PIH 2016-17]**

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.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions 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.

### **18-II.G. ENVIRONMENTAL REVIEW [Notice PIH 2012-32, REV-3]**

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted as part of the financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2012-32, REV-3.

## **PART III: DWELLING UNITS**

### **18-III.A. OVERVIEW**

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

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

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

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

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

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

### **18-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)

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

#### **Initial Inspection [Notice PIH 2012-32, REV-3]**

Under RAD, all units must meet HQS no later than the date of completion of the work as indicated in the RCC.

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

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

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

At least once every 24 months during the term of the HAP contract, the 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.

##### PHA Policy

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

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

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

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

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

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

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

### **18-IV.A. OVERVIEW**

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

### **18-IV.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [PBV Quick Reference Guide (10/14)]**

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-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 also required to include an LIHTC rider.

#### **Execution and Effective date of the HAP Contract [*RADBlast!* 7/11/16]**

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

#### **Term of HAP Contract [Notice PIH 2012-32, REV-3]**

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 United States Housing Act of 1937, which established a maximum term of 15 years, as well as 24 CFR 983.205(a), which governs the contract term.

#### **Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2012-32, REV-3]**

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.

### **Mandatory Contract Renewal [Notice PIH 2012-32, REV-3]**

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will 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 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

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

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

#### PHA Policy

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

### **18-IV.C. AMENDMENTS TO THE HAP CONTRACT**

#### **Floating Units [Notice PIH 2012-32, REV-3]**

In certain mixed-finance projects, the PHA may ask HUD permission to have assistance float among 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.

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.

#### PHA Policy

The PHA will not float assistance among unoccupied units within the project.

#### **Reduction in HAP Contract Units [Notice PIH 2012-32, REV-3]**

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

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 contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

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, 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.

#### **18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 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 date for all units under a particular HAP contract.

#### **18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

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

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

#### **18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

##### PHA Policy

The PHA may negotiate vacancy payments to the owner. Any vacancy payment negotiated will be clearly stated in the HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

### **PART V: SELECTION OF PBV PROGRAM PARTICIPANTS**

#### **18-V.A. OVERVIEW**

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

#### **18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2012-32, REV-3]**

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2012-32, REV-3 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income 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. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

### **18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

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

#### PHA Policy

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

### **18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2012-32, REV-3]**

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies.

#### PHA Policy.

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. The PHA currently has waiting lists for the following RAD PBV projects:

Parsons Apartments

Scattered Sites

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the PHA will transfer such household, consistent with program requirements for administration of waiting lists, to the PHA's voucher waiting list according to date and time of application and applicable local preferences, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

The PHA will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). The PHA will provide applicants full information about each development, including an estimate of the

wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will 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 will 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, the PHA will use independent testers to assure that the site-based system is not being implemented in a discriminatory manner.

### **18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

#### **Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2012-32, REV-3]**

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

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements.

#### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

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

#### **Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2012-32, REV-3]**

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

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

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

#### PHA Policy

The PHA will not offer any preferences for the RAD PBV program or for particular PBV projects or units.

## **18-V.F. OFFER OF PBV ASSISTANCE**

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

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing 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
- Removing the applicant from the tenant-based voucher waiting list

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

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

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

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

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

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

#### ***Persons with Limited English Proficiency***

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

## **18-V.G. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

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

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

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

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### PHA Policy

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

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

## **18-V.H. TENANT SCREENING [24 CFR 983.255]**

### **PHA Responsibility**

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

#### PHA Policy

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

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

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

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

#### PHA Policy

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

## **Owner Responsibility**

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

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

## **PART VI: OCCUPANCY**

### **18-VI.A. OVERVIEW**

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

### **18-VI.B. LEASE [24 CFR 983.256; Notice PIH 2012-32, REV-3]**

The tenant must have legal capacity to enter into 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.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

### **Lease Requirements [24 CFR 983.256(c); Notice PIH 2012-32, REV-3]**

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

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

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. An example of language that may be included can be found in Attachment-1E of Notice PIH 2012-32, REV-2.

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f); PBV Quick Reference Guide (10/14)]**

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.

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

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

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

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

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

### **Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2012-32, REV-3]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner's lease as well as the PHA's administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which may not be less than:

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

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. See Chapter 16 Part III: Informal Reviews and Hearings for more information.

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

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

#### **Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2012-32, REV-3]**

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, until such time as the family's TTP falls below the gross rent, the family will pay the owner the lesser of their TTP minus the utility allowance or any applicable maximum rent under the LIHTC program. 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, 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. Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180 day window. If a family's assistance is terminated as a result of

their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted, 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.

#### PHA Policy

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

### **Security Deposits [24 CFR 983.259; PBV Quick Reference Guide (10/14)]**

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.

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

#### PHA Policy

The PHA will allow the owner to collect a security deposit in compliance with any regulatory agreement on the property or an amount the owner determines is appropriate, whichever is less.

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

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

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

### **18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2012-32, REV-3]**

Not applicable.**18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2012-32, REV-3]**

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.

### **18-VI.E. MOVES**

**Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2012-32, REV-3]**

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family.

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

PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project

Tenant-based voucher assistance

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

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

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

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

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA.\*

## **Choice Mobility [Notice PIH 2012-32, REV-3]**

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 lease requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

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

### PHA Policy:

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to the PHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

The PHA will place all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy\* on the regular tenant-based waiting list with a preference in accordance with Chapter 4 of this policy.

\* **Exception** – Any family who resides at Clare View Senior Apartments or Cedar Haven LLLP (only Cedar West property) on the date of Public Housing Scattered Site RAD conversion/transfer of assistance to those properties, who voluntarily converts their tenant-based voucher to a project-based voucher; and who wishes to move with continued tenant-based assistance during the first year of the lease will be offered the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based assistance (i.e., these households will not be required to wait until the end of the first year of their new lease to request tenant-based assistance).

## **Turnover Cap**

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

## PHA Policy

The PHA will not establish a choice mobility cap.

### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

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

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

## PHA Policy

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

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

If no units are available for an internal transfer or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to tenant-based rental assistance (HCV). Such a decision will be made by the SHA based on the availability of tenant-based vouchers. Such families must be selected from the waiting list for the applicable program (reference Chapter 4-III.C).

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

### **18-VI.F. REEXAMINATIONS [PBV Quick Reference Guide (10/14)]**

A family living in a unit converted from public housing to RAD PBV may 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 have to submit a form 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. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

### **18-VI.G. EARNED INCOME DISALLOWANCE [Notice PIH 2012-32, REV-3]**

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 will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the HCV 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 persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as 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.

#### **18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2012-32, REV-3]**

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV require that PHAs provide adequate written notice of termination of the lease, which is no less than:

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

#### **18-VI.I. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2012-32, REV-3]**

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 for an informal hearing listed at 24 CFR 982.555(a)(1)(i)-(vi) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an 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.

- 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.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does 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 PHA (as owner) or contract administrator.

The PHA (as owner) must 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). (See Chapter 16)

The PHA (as owner) must provide an opportunity for an informal hearing before an eviction.

## **PART VII: DETERMINING CONTRACT RENT**

### **18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2012-32, REV-3]**

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2012-32, REV-2. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

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 percent 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
  - Adjusted through rent bundling or reconfiguration of units

### **18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

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 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the 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)

- 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*, or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF.

At least 120 days before the contract anniversary date, HUD recommends that the owner submit the OCAF rent adjustment worksheet (Form HUD-9625) to the PHA administering the PBV assistance (or the independent entity). The PHA will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent can only be increased up to the reasonable rent. The approved rent adjustment will go into effect and the new rents to owner will take effect on the date of the contract anniversary.

### **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.

### **18-VII.C. UTILITY ALLOWANCES [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

When contract rent amounts are set initially, the amount does not include a utility allowance. 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. A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule.

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.

#### PHA Policy

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

### **18-VII.D. REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

## **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

### ***Comparability Analysis***

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

### **PHA-Owned Units**

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

## **PART VIII: PAYMENTS TO OWNER**

### **18-VIII.A. HOUSING ASSISTANCE PAYMENTS**

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

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

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

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

### **18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]**

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

#### PHA Policy

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

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

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

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

#### PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 18-V.G. 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 PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

### **18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353]**

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

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the

owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### **Tenant and PHA Responsibilities**

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

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

### **Utility Reimbursements**

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

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

#### PHA Policy

The PHA will make utility reimbursements directly to the utility company.

### **18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2012-32, REV-3]**

For in-place tenants, 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 three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 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. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

#### PHA Policy

The PHA will implement a three-year phase-in for in-place 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 percent of the difference between the most recently paid TTP and the calculated PBV TTP

Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP

Year 3: Year 3 AR and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

#### **18.VIII.E. 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.