

## 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 LISTS [24 CFR 982.204 and 205]

##### **Waiting List for Tenant Based Assistance**

The SHA's HCV tenant based 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 tenant based 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.

##### **Waiting List for Project Based Voucher Assistance**

The SHA may establish a separate waiting list for PBV units or it may use the same waiting list

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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.

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

##### Closing the Waiting List

The SHA will close the tenant-based waiting lists and/or project-based voucher site-based waiting list(s) 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, Youth and Family Services.

Eligible households for the Family Unification Program may also be referred through the Spokane Community's Coordinated Entry program, but must first be determined eligible by the Department of Social and Health Services', Department of Children, Youth and Family Services prior to the referral being received by SHA.

***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.
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. 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 9

### GENERAL LEASING POLICIES

#### INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the SHA to assist a family in a particular dwelling unit or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the SHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)];
- The unit must be inspected by the SHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)];
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)];
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)];
- The owner must be an eligible owner, approvable by the SHA, with no conflicts of interest [24 CFR 982.306]; and
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)].

#### 9-I.A. TENANT SCREENING

The SHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The SHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the SHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before the SHA's approval of the tenancy, the SHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The SHA must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a)(2)].

The SHA must provide the owner with the family's current and prior address (as shown in the SHA records) and the name and address (if known to the SHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The SHA is permitted, but not required, to offer the owner other information in the SHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

The SHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The SHA may not disclose to the owner any confidential information provided by the family in response to a SHA 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(b)(4)].

#### SHA Policy

- The SHA will not screen applicants for family behavior or suitability for tenancy.
- The SHA will provide additional screening information to the owner upon written request. Said information will be limited to prior landlord names and addresses known to the SHA for up to three years.

### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the SHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit the following document to the SHA:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517;
- IRS Form W-9 and Direct Deposit Form (New owners); and
- Lead-Based Paint Certification and Addendum Acknowledgement.

The RFTA contains information necessary for the SHA to determine whether to approve the assisted tenancy for the unit selected by the family; including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent and the requested beginning date of the lease.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the SHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

The RFTA must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

#### SHA Policy

- The RFTA must be signed by both the family and the owner.
- The owner may submit the RFTA on behalf of the family.
- Completed RFTA must be submitted as hard copies, in-person, by mail, email or by fax.
- The family may not submit and the SHA will not process, more than one (1) RFTA at a time.
- When the family submits the RFTA the SHA will review the RFTA for completeness:

- If the RFTA is incomplete (including lack of signature by family, owner or both), the SHA will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, email or by fax.
- The SHA will not accept missing information over the phone.
- Because of the time sensitive nature of the tenancy approval process, the SHA will attempt to communicate with the owner and family by phone, fax or email. The SHA will use mail when the parties cannot be reached by phone, fax or email.

### **9-I.C. OWNER PARTICIPATION**

The SHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the SHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest or other owner-related issues. There are also criteria for which the SHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the SHA's jurisdiction. This includes the dwelling unit they are currently occupying.

#### **Ineligible Units [24 CFR 982.352(a)]**

The SHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes or facilities providing continual psychiatric, medical or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental and similar public or private institutions; a unit occupied by its owner or by a person with any financial interest in the unit.

#### **SHA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by the SHA issuing the voucher may also be leased in the voucher program. In order for a SHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the SHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a SHA-owned unit without any pressure or steering by the SHA.

#### SHA Policy

- The SHA has eligible SHA-owned units available for leasing under the voucher program.
- The SHA will inform the family of this housing at the time of the briefing. The SHA will also inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a SHA-owned unit without any pressure or steering by the SHA.

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the SHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the SHA has chosen to allow.

The regulations do require the SHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

## **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

## **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

## **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards and calculation of family income, family share of rent and HAP.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the SHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

## **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

### SHA Policy

The SHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant(s). All adult family members must be listed on and sign the lease. In addition, all authorized occupants names must be listed on the lease;
- The unit rented (address, apartment number and any other information needed to identify the contract unit);
- The term of the lease (initial term and any provisions for renewal);
- The amount of the monthly rent to owner; and
- A specification of what utilities and appliances are to be supplied by the owner and what utilities and appliances are to be supplied by the family.

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the SHA to approve a shorter initial lease term if certain conditions are met.

### SHA Policy

The SHA will approve an initial lease term of less than one (1) year only where the SHA determines and clearly document that: (i) Such shorter term would improve housing opportunities for the tenant; and (II) Such shorter term is the prevailing local market practice.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The SHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

### **Security Deposit [24 CFR 982.313 (a) and (b)]**

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. However, if the SHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

### SHA Policy

The owner may collect any security deposit deemed appropriate; however, the SHA prohibits the collection of first and last month rent.

## **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the SHA minus the SHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

### SHA Policy

- The SHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.
- Any items, appliances or other services that are customarily provided to unassisted families as part of the dwelling lease with those families or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.
- Any items, appliances or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.
- The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.
- Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

## **SHA Review of Lease**

The SHA will review the dwelling lease for compliance with all applicable requirements.

### SHA Policy

- If the dwelling lease is incomplete or incorrect, the SHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, email (scanned/signed document) or by fax. The SHA will not accept missing and corrected information over the phone
- Because the initial leasing process is time-sensitive, the SHA will attempt to communicate with the owner and family by phone, fax or email. The SHA will use mail when the parties can't be reached by phone, fax or email.

The SHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the SHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

#### SHA Policy

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

### **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the SHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the SHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the SHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the SHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum and the lead-based paint disclosure information [24 CFR 982.305(b)].

#### SHA Policy

- The SHA will complete its determination within 10 business days of receiving all required information.
- If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the SHA, the SHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner. Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, email (scanned/signed document) or by fax. The SHA will accept corrections over the phone; however, all corrections to the RFTA must be initialed by both the Owner and the participant.
- If the SHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The SHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.
  - Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.
  - If the tenancy is not approvable due to rent affordability or rent reasonableness, the SHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must

continue to search for eligible housing within the timeframe of the issued voucher.

### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between the SHA and the owner of the dwelling unit. Under the HAP contract, the SHA agrees to make housing assistance payments to the owner on behalf of the family and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the SHA has given approval for the family of the assisted tenancy, the owner and the SHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The SHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The SHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The SHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the SHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void and the SHA may not pay any housing assistance payment to the owner.

#### SHA Policy

- Owners who have not previously participated in the HCV program must attend a meeting with the SHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The SHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.
- The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the SHA. The SHA will ensure that both the owner and the assisted family receive copies of the dwelling lease and required HUD Lease Addendum.
- The owner and the SHA will execute the HAP contract. The SHA will not execute the HAP contract until the owner has submitted IRS form W-9. The SHA will ensure that the owner receives a copy of the executed HAP contract.
- As required under VAWA 2013, once the HAP contract and lease have been executed and the family has been admitted to the program, the SHA will notify families of their rights under VAWA by providing all families with a copy of the Domestic Violence Certification (form HUD-5382) as well as the VAWA Notice of Occupancy Rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing and the owner must immediately give the SHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, the SHA's approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
- Changes in lease provisions governing the term of the lease; and
- The family moves to a new unit, even if the unit is in the same building or complex.

Where the owner is changing the amount of the rent to owner, the owner must notify the SHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The SHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

#### SHA Policy

- Where the owner is requesting a rent increase, the SHA will determine whether the requested increase is reasonable.
- Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the SHA of the rent change or on the date specified by the owner, whichever is later. Notification will be sent to the Landlord and Participant of the approval or denial of the proposed rent increase. If the increase causes the tenant portion to increase, the tenant will receive at least a 30 day notice.
- Rent increases will be limited to one per 12 month period.

## 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

### **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:

WA05500001-Parsons Hotel	50 Units Elderly/Disabled	Converted 2017
WA05500002-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(I).

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. OPENING AND CLOSING THE WAITING LIST**

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

The SHA will close the project-based voucher site-based waiting list(s) when the estimated waiting period for housing assistance for applicants on the list reaches 12 months for the most current recent applicants.

##### **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, how, -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.

(See also Chapter 4 II.C-II.F)

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#### **17-VI.D.E. 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.EF. 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.FG. 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.GH. 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 the 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.