

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 983

[Docket No. FR-4636-P-01]

RIN 2577-AC25

Project-Based Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes comprehensive regulations for the new project-based voucher program. In this program, HUD pays rental assistance for eligible families who live in specific housing developments or units. A public housing agency (PHA) that runs the tenant-based housing choice voucher program may “project-base” up to 20 percent of voucher units funded by HUD. The project-based voucher program replaces the project-based certificate program and these regulations would replace the current regulations for the project-based certificate program.

DATES: *Comments Due Date:* May 17, 2004.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708-0477 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The new project-based voucher program was authorized by statute in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See Section 545 of

the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, approved October 21, 1998, amending 42 U.S.C. 1437f(o)). The 1998 law provided PHAs with the option to use a portion of its available tenant-based voucher funds for project-based rental assistance. The 1998 law replaced a similar authority for project-based rental assistance in the former certificate program. In 2000, the Congress substantially revised the requirements of the project-based voucher program. (Section 8(o)(13) of the United States Housing Act of 1937, 42 U.S.C. 1473f(o)(13), as amended by section 232 of the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act (Pub. L. 106-377, approved October 27, 2000).)

Significant features of the project-based voucher program as authorized in 1998, and amended in 2000 include:

- A PHA may project-base up to 20 percent of the PHA's voucher funding.
- A PHA may provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing.
- Project-based assistance must be consistent with the “PHA Plan.”
- Project-basing must be consistent with the statutory goals of “deconcentrating poverty and expanding economic opportunities.”
- After one year of assistance, the family may move from a project-based voucher unit to the PHA's tenant-based voucher program or another comparable program, when a slot is available.
- Except for units designated for the elderly, disabled, or families receiving supportive services under a family self-sufficiency (FSS) program, no more than 25 percent of units in a building may have project-based voucher assistance.
- A PHA may commit to pay project-based assistance for a term of up to 10 years. However, the PHA's contractual commitment is subject to availability of appropriated funds.
- At the end of the contract term, the PHA may extend the housing assistance payment (HAP) contract with an owner for an additional term of up to one year, if appropriate, to continue providing affordable housing for low-income families. One-year extensions are subject to availability of appropriated funds.
- Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) must not exceed the lowest of the payment standard amount (minus any utility allowance), the reasonable rent, or the rent requested by the owner. This limit

applies both to the initial rent and rent adjustments over the term of the HAP contract.

- There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building located outside a “qualified census tract.”

- Admission to project-based units is subject to the overall voucher “income-targeting” requirement. At least 75 percent of the families admitted to the PHA tenant-based and project-based voucher programs each year must be “extremely low-income” families with annual incomes below 30 percent of median income for the area.

- All units must be inspected for housing quality standards (HQS) compliance before the PHA enters a HAP contract with an owner. After the initial inspection, the PHA is not required to re-inspect each unit annually. Instead, the PHA may inspect a representative sample of units at the annual inspection.

- If a family moves out, the PHA may continue payments to the owner for up to 60 days. The PHA has discretion whether to provide such vacancy payments.

On January 16, 2001 (66 FR 3605), HUD published a **Federal Register** notice that provided guidance on implementation of the new project-based program, as authorized in 1998 and amended in 2000. The HUD notice described the law and provided guidance on how to implement the law and existing program regulations before HUD issues new program regulations. This notice remains applicable until HUD issues a final rule following this proposed rule.

Requirements of this proposed rule would be applicable to all project-based voucher units, except that this rule would not affect the contractual rights of owners under project-based voucher agreements and HAP contracts entered into by a PHA and owner (1) prior to the effective date of the final rule, and (2) in accordance with the law and HUD requirements and on the contractual forms prescribed by HUD. This rulemaking will not apply to project-based certificate units. Project-based certificate units will continue to be governed by the regulations of 24 CFR part 983, codified as of April 1, 2003, after this rule becomes effective.

II. This Proposed Rule

An overview of the regulations that this rule proposed to govern the project-based voucher program follows.

A. A Project-Based Voucher Program Administered by PHAs Uses Tenant-Based Voucher Funding. There Is No Separate Allocation of Project-Based Funds. It is the PHA's Option Whether To Implement a Project-Based Voucher Program

The project-based voucher program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. There is no additional funding for project-based vouchers.

If a PHA decides to operate a project-based voucher program, the program is funded with a portion of the appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay rental assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

A PHA has discretion whether to implement a project-based voucher program. HUD approval is not required.

B. Maximum Number of Project-Based Voucher Units

Prior to 1998, the law capped the number of project-based units at the number supported by 15 percent of the total funding available to the PHA under the PHA's ACC for tenant-based assistance. Under this rule, the PHA would be able to project-base up to 20 percent of the PHA's "baseline" number of units. This baseline number is established pursuant to § 982.102 and is the number of voucher units used by HUD to determine the amount needed for renewal of the ACC. All outstanding commitments for project-based assistance—project-based certificate and project-based voucher units under agreement or HAP contract plus project-based units selected by the PHA but not yet under agreement or HAP contract—count against the 20 percent maximum.

C. Project-Based Vouchers May Be Used With Existing Housing.

In the past (under the project-based certificate program), a PHA could only project-base newly constructed or rehabilitated units—using a portion of its available tenant-based funding. In the project-based voucher program, a PHA may also use tenant-based funding to attach assistance to existing units not needing rehabilitation.

To qualify as "existing housing" as defined in the rule, the units must already exist and substantially comply with the housing quality standards (HQS) on the proposal selection date.

This is the date the PHA gives written notice of proposal selection to the owner whose proposal is selected. The units must fully comply with the HQS before execution of the HAP contract.

D. Project-Based Vouchers May Be Used With Newly Constructed and Rehabilitated Housing

Under this proposed rule, the requirements for "newly constructed or rehabilitated housing" would apply to any housing that does not qualify as "existing housing." These requirements would apply to any housing that does not substantially comply with the HQS on the proposal selection date and that therefore requires a process of development to comply with the HQS.

"Development" is defined as the construction or rehabilitation of project-based voucher housing after the proposal selection date. Construction includes any excavation or site preparation for the housing.

In the construction or rehabilitation of the housing, the owner must comply with federal development requirements such as compliance with labor standards (including Davis-Bacon), environmental, and equal opportunity (e.g., Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, equal employment, and program accessibility) requirements. Owners must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR 8.22, 8.23(a), or 8.23(b), as applicable, and the design and construction requirements of the Fair Housing Act Amendments of 1988, 42 U.S.C. 3604(f)(3)(C), and the regulations at 24 CFR 100.205, as appropriate.

An agreement is executed for units to be constructed or rehabilitated before the beginning of construction or rehabilitation. In the agreement, the owner agrees to develop the contract units to comply with the HQS. The owner also agrees to comply with federal development requirements, such as compliance with federal Davis-Bacon prevailing wage requirements (40 U.S.C. 3141 *et seq.*) relative to the development of nine or more project-based voucher units. The PHA monitors compliance with labor standards (see HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs).

The PHA agrees that upon timely completion of such development in accordance with the terms of the agreement the PHA will enter into a HAP contract with the owner for the contract units.

E. PHAs May Select Only Sites Meeting Certain Requirements, Including Deconcentration Goals

All site selection must be consistent with the project-based voucher statutory goals of deconcentrating poverty and expanding housing and economic opportunities.

For the most part, there is no need to distinguish between "newly constructed" and "rehabilitated" housing since the project-based voucher program requirements are identical. As in the past, however, the new rule would substantially continue the existing distinction between the civil rights site selection standards for "newly constructed" and "rehabilitated" housing.

At this time, HUD does not propose a substantive change in the existing site selection standards for newly constructed or rehabilitated housing. The site and neighborhood standards specified in this proposed rule are HUD's "institutional standards" for evaluating and considering the effect of site selection, in the light of HUD's responsibility to affirmatively promote fair housing in its programs.

F. PHAs Must Select Units for the Project-Based Voucher Program in Accordance With the PHA's Local Unit Selection Policies and Competitive Procedures

Generally, HUD will require PHAs to select project-based voucher proposals based on some kind of public competition. In cases where a federal, state, or local housing assistance, community development, or supportive services program that requires a competitive selection of proposals has already competitively selected proposals, a second competition for project-based vouchers is not required. In all other cases, however, PHAs must select proposals based on public competition. The notice of competition must be published by means that actually operate to provide broad public notice, including publication in a newspaper of general circulation and other means. The selection of winning proposals shall also be made public. The PHA's unit selection policies must be specified in the PHA's administrative plan, and the PHA must select units in accordance with those policies.

G. Generally, No More Than 25 Percent of the Units in Each Multifamily Building May Be Assisted

Generally, no more than 25 percent of the dwelling units in each building may have project-based voucher or any other federal project-based housing assistance.

The following types of housing units are exempt from the 25 percent per building cap: (1) Project-based dwelling units in single family (one-to four-unit) properties; (2) units in a multifamily building (5 or more units) set aside for elderly or disabled families; and (3) units in a multifamily building set aside for families participating in a voucher, project-based certificate, or public housing FSS program who are in compliance with or have completed their FSS contract of participation. In addition, PHAs may establish additional local requirements to promote income mixing.

The restrictions concerning the number of subsidized units in each building apply to all types of housing selected for the project-based voucher program—existing, newly constructed, and rehabilitated housing.

H. Family Option To Move From Project-Based Voucher Unit After First Year and Receive Tenant-Based Assistance Elsewhere

After living in the project-based unit one year, the tenant may move out and receive tenant-based voucher subsidy or other comparable tenant-based rental assistance. “Comparable rental assistance” is defined as a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than forty percent of the family’s monthly adjusted income.

The tenant must give the owner advance written notice of intent to vacate the project-based voucher unit in accordance with the lease. If a tenant-based voucher (or comparable assistance) is not immediately available when the project-based voucher unit lease is terminated, the PHA must give the family priority to receive the next available voucher or comparable assistance.

Vouchers from funding allocations targeted by HUD for special purposes (e.g., family unification, mainstream disabled) are not available for this purpose.

I. Term of HAP Contract; Ten Year Maximum Initial HAP Contract Term

In all cases, units must comply with the HQS before the HAP Contract is executed. For newly constructed or rehabilitated units, the HAP Contract is executed after the construction work ends, and the PHA accepts that the units have been completed in accordance with the agreement, including full compliance with the HQS.

The HAP Contract term for each unit is between one year and ten years, as determined by the PHA. However,

continuation to the full term is subject to the future availability of sufficient appropriated funds under the PHA’s consolidated ACC with HUD.

At the end of the term, the PHA may extend the initial HAP Contract term for additional terms of up to one year if the PHA determines that such extensions are appropriate to continue providing affordable housing for low-income families. Such extensions are subject to the continuing availability of appropriations.

J. Every Unit Must Comply With the Housing Quality Standards (HQS) Before the HAP Contract Is Executed. Annual PHA HQS Inspections May Be Limited to a Representative Sample of Units Under HAP Contract

Project-based voucher units must comply with the HQS before the HAP contract is executed and during the term of the HAP contract. The PHA may establish additional quality, architecture, and design requirements for newly constructed or rehabilitated housing.

Before and during the term of assistance, project-based voucher units are inspected for compliance with the HQS. Every project-based voucher contract unit must be inspected and pass the HQS inspection before housing assistance is provided under the HAP contract.

However, a PHA is not required to inspect each project-based voucher unit in a project annually. Instead, at least annually during the term of the HAP contract, the PHA must initially inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. If more than 20 percent of the initially inspected contract units in a building fail the initial annual inspection, the PHA must inspect 100 percent of the contract units in the building. In addition, the PHA must inspect every turnover unit before occupancy by a replacement assisted family.

K. Initial Rent to Owner; Special Rent Rules for Tax Credit Units Not Located in a Qualified Census Tract; Rent Adjustments

Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) must not exceed the lowest of the payment standard amount, the reasonable rent, or the rent requested by the owner for the PHA’s tenant-based voucher program. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.

There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building which is located outside a qualified census tract with tax credit rents exceeding the PHA’s payment standard, where there are comparable tax credit units of the same unit bedroom size as the contract unit, and the comparable tax credit units do not have any form of rental assistance other than the tax credit. These provisions are found at § 983.301(c) of this proposed rule. 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 or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD (see proposed 24 CFR 983.301(c)(4)). The provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the project-based voucher program.

L. The Family Share of Rent Is Calculated Based on the “Total Tenant Payment;” Housing Assistance Payment Amount

“Total tenant payment” and “tenant rent” are calculated in accordance with the regulations in 24 CFR part 5. Families pay as the total tenant payment the higher of 30 percent of adjusted monthly income, 10 percent of annual income, any welfare rent, or the PHA’s minimum rent. The housing assistance payment is the difference between the rent to the owner and the tenant rent (total tenant payment minus any utility allowance).

M. Income Targeting Requirements for Tenant-Based and Project-Based Vouchers

Admission to the project-based voucher program is subject to the same statutory income targeting requirement as the tenant-based program (42 U.S.C. 1437n(b)), instead of the individual project income targeting requirement that applies to other Section 8 project-based assistance (42 U.S.C. 1437n(c)(3)). During the PHA fiscal year, 75 percent of the admissions to the voucher program (both tenant-based and project-based units) must be “extremely low-income families”—defined as families with annual incomes not exceeding 30 percent of median income for the area, as determined by HUD.

N. Family Selection From PHA Waiting List

The PHA refers waiting list applicants or current participants to the owner for

selection. The owner screens and selects tenants from families referred by the PHA.

The PHA may elect to establish a separate waiting list for project-based voucher assistance, or to use a single common list for admission to the PHA's tenant-based and project-based voucher programs. If a PHA chooses to establish a separate waiting list for project-based assistance, the PHA must give all applicants currently on its waiting list for tenant-based assistance the opportunity to also have their names placed on the waiting list for project-based assistance in accordance with the PHA's established selection policies. The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

The PHA may place on the PHA's waiting list applicants referred by owners in accordance with the PHA's local waiting list policies and admission preferences.

O. PHA Option To Provide Vacancy Payment to Owner

A PHA may opt to include a provision in the HAP contract to make vacancy payments to the owner after an assisted family leaves the project-based voucher unit. A vacancy payment is only permitted if: (1) The owner gives prompt notice of the vacancy to the PHA; (2) the vacancy is not the owner's fault; and (3) the owner takes all reasonable actions to minimize the likelihood and length of the vacancy period.

The maximum vacancy payment amount is 60 days rent to owner.

P. PHA-Owned Units

A PHA-owned unit may only be assisted under the PBV program if the HUD field office or an independent entity approved by HUD reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan.

If PHA-owned housing is selected for the project-based voucher program, an independent entity approved by HUD will conduct HQS inspections. The independent entity will give copies of the inspection report to the PHA and the HUD field office. In addition, an independent entity approved by HUD will determine the initial and adjusted rent to owner.

By law, public housing units may not be assisted in the project-based voucher program.

Q. PHA Option To Amend HAP Contract To Add or Substitute Contract Units

At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.

In addition, at the discretion of the PHA, the HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in a building as long as the total number of project-based voucher and other assisted units stays at or below 25 percent of the total number of units, with or without assistance, in the building. Additional PBV contract units are subject to all PBV requirements (e.g., compliance with Davis-Bacon wage rates during construction and compliance with applicable environmental review requirements), except that a new PBV proposal competition is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

R. Termination of tenancy

The regulations in 24 CFR part 247 (concerning evictions from certain subsidized and HUD-owned projects) do not apply to owner termination of tenancy and eviction of a family receiving PBV assistance.

III. Specific Issues for Comment

HUD seeks comments on all of the PBV program policies contained in this proposed rule, and specifically seeks comments on the following two issues:

(a) *Competitive selection of owner proposals.* HUD acknowledges that it is desirable to permit PHA flexibility to devise local selection policy strategies and invites recommendations on how best to regulate PHA selection of PBV units. At the same time, HUD recognizes that it is in the public interest to avoid any hint of the "influence peddling" scandals experienced under the Section 8 moderate rehabilitation program. This proposed rule would require public advertisement for and competitive selection of owner proposals unless the

units previously were competitively awarded assistance under a federal, state, or local government housing assistance, community development, or supportive services program. This policy will permit PHAs to select HOME, HOPE VI, tax credit, and similar units for the PBV program without conducting a second PBV competition. HUD solicits comment on whether the owner selection policies proposed in § 983.51 would be appropriate and would permit PHA flexibility to select desirable units, target desirable neighborhoods, and target key "turning point" buildings in revitalizing areas while avoiding any hint of owner favoritism or corrupt funding distribution practices.

(b) *Minimizing displacement.* It has been longstanding HUD policy for both the project-based certificate and moderate rehabilitation programs to minimize displacement of current income-eligible tenants in buildings to be rehabilitated. If a unit in a building selected for one of these programs were occupied by an eligible low-income family, the family could remain in the unit and receive housing assistance. While preventing displacement of families and facilitating housing rehabilitation efforts, this policy results in eligible families in occupied units receiving a preference over families on the PHA's waiting list (at least in instances where a PHA does not already provide a waiting list selection preference for families about to be displaced). This rule applies the policy of minimizing displacement to existing housing, a category of housing that previously was not eligible to receive project-based vouchers. HUD requests comments on whether the policy described in § 983.251(b) is appropriate public policy, or whether PHAs should be prohibited from selecting occupied units for the project-based voucher program.

IV. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room

10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-605) (RFA), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is exclusively concerned with PHAs that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would give PHAs the option of project-basing up to 20 percent of their annual budget authority under the tenant-based program. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and

does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and record keeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 983 as follows:

1. Revise 24 CFR part 983 to read as follows:

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart A—General

Sec.

- 983.1 When PBV rule (this part 983) applies.
- 983.2 When tenant-based voucher rule (24 CFR part 982) applies.
- 983.3 PBV definitions.
- 983.4 Cross-reference to other Federal requirements.
- 983.5 Description of the project-based voucher program.
- 983.6 Maximum number of PBV units.
- 983.7 Uniform Relocation Act.
- 983.8 Equal opportunity requirements.
- 983.9 Special housing types.
- 983.10 Project-based certificate program.

Subpart B—Selection of PBV Owner Proposals

- 983.51 Owner proposal selection procedures.
- 983.52 Housing type.
- 983.53 Prohibition of assistance for ineligible units.
- 983.54 Prohibition of assistance for units in subsidized housing.
- 983.55 Prohibition of excess public assistance.
- 983.56 Cap on number of PBV units in each building.
- 983.57 Site selection standards.
- 983.58 Environmental review.
- 983.59 PHA-owned units.

Subpart C—Dwelling Units

- 983.101 Housing quality standards.
- 983.102 Housing accessibility for persons with disabilities.
- 983.103 Inspecting units.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

- 983.151 Applicability.
- 983.152 Purpose and content of the Agreement to enter into HAP contract.
- 983.153 When Agreement is executed.
- 983.154 Conduct of development work.
- 983.155 Completion of housing.
- 983.156 PHA acceptance of completed units.

Subpart E—Housing Assistance Payments Contract

- 983.201 Applicability.
- 983.202 Purpose of HAP contract.
- 983.203 HAP contract information.
- 983.204 When HAP contract is executed.
- 983.205 Term of HAP contract.
- 983.206 HAP contract amendments (to add or substitute contract units).
- 983.207 Condition of contract units.
- 983.208 Owner responsibilities.
- 983.209 Owner certification.

Subpart F—Occupancy

- 983.251 How participants are selected.
- 982.252 PHA information for accepted family.
- 983.253 Leasing of contract units.
- 983.254 Vacancies.
- 983.255 Tenant screening.
- 983.256 Lease.
- 983.257 Owner termination of tenancy and eviction for criminal activity or alcohol abuse.
- 983.258 Security deposit: amounts owed by tenant.
- 983.259 Overcrowded, under-occupied, and accessible units.
- 983.260 Family right to move.
- 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

Subpart G—Rent to Owner

- 983.301 Determining the rent to owner.
- 983.302 Annual redetermination of rent to owner.
- 983.303 Reasonable rent.
- 983.304 Other subsidy: effect on rent to owner.
- 983.305 Rent to owner: effect of rent control and other rent limits.

Subpart H—Payment to Owner

- 983.351 PHA payment to owner for occupied unit.
- 983.352 Vacancy payment.
- 983.353 Tenant rent; payment to owner.
- 983.354 Other fees and charges.

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General

§ 983.1 When PBV rule (this part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section

8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

§ 983.2 When tenant-based voucher rule (24 CFR part 982) applies.

(a) 24 CFR part 982. Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that *do not apply* to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at § 982.4, *see* § 983.3 of this part.

(b) *Types of 24 CFR part 982 provisions that do not apply to PBV.* The following types of provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) Provisions on issuance or use of a voucher;

(2) Provisions on portability;

(3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option.

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* Except as specified below, the following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: paragraph (b)(2) of § 982.202, and paragraph (d) of § 982.204;

(2) Subpart G of part 982: subpart G does not apply, except that § 982.310 (owner termination of tenancy) as modified by § 983.257, § 982.312 (absence from unit) as modified by § 983.256(g), and § 982.316 (live-in aide) apply to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: § 982.401(j); paragraphs (a)(3), (c), and (d) of § 982.402; § 982.403; § 982.405(a); and § 982.406;

(5) In subpart J of part 982: § 982.455;

(6) Subpart K of part 982: subpart K does not apply, except that the following provisions of subpart K apply to the PBV Program:

(i) Section 982.503 (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 (utility allowance schedule); and

(iv) Sections 982.551 through 982.555.

(7) In Subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2); and

(ii) Provisions concerning shared housing (§§ 982.615 through 982.618), cooperative housing (§ 982.619), manufactured home space rental (§§ 982.622 through 982.624), and the homeownership option (§§ 982.625 through 982.641).

§ 983.3 PBV definitions.

(a) *Use of PBV definitions.* (1) *PBV terms (defined in this section).* This section defines PBV terms that are used in 24 CFR part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of part 982. (Section 983.2 specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) *Other voucher terms (terms defined in 24 CFR 982.4).* (i) The definitions in this section apply instead of definitions of the same terms in 24 CFR 982.4.

(ii) Other voucher terms are defined in § 982.4, but are not defined in this section. These § 982.4 definitions apply to use of the defined terms in part 983 and in provisions of part 982 that apply to part 983.

(b) *PBV definitions.*

1937 Act. The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Activities of daily living. Eating, bathing, grooming, dressing, and home management activities.

Admission. The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

Agreement to enter into HAP contract (Agreement). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section.

Assisted living facility. A residence facility (including a facility located in a

larger multifamily property) that meets all the following criteria:

(1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;

(2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and

(3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

Baseline units. The number of units reserved by HUD for the PHA's program as calculated under 24 CFR 982.102(d)(i) and as adjusted under 24 CFR 982.102(d)(ii).

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than forty percent of the family's monthly adjusted income.

Contract units. The housing units covered by a HAP contract.

Development. Construction or rehabilitation of PBV housing after the proposal selection date.

Excepted units (units in a multifamily building not counted against the 25 percent per-building cap). *See* § 983.56(b)(2)(i).

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. *See* periodic FMR publications in the **Federal Register** in accordance with 24 CFR part 888.

Family. The person or persons approved by the PHA to reside in a contract unit with assistance under the program.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). Group home is a special housing type. *See* 24 CFR 982.610.

HAP contract. The written housing assistance payments contract between

the PHA and the owner in the form prescribed by HUD.

Household. The family and any PHA-approved live-in aide.

Housing assistance payment. The monthly assistance payment for a PBV unit by a PHA, which includes:

(1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

(2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the program. *See* 24 CFR 982.401.

HUD. The United States Department of Housing and Urban Development.

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Multifamily building. A building with five or more dwelling units (assisted or unassisted).

Newly constructed housing. Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

Owner. A person or entity with the legal right to lease or sublease a unit to a participant.

Partially-assisted building. A building where the number of contract units is less than the number of residential units in the building.

Participant. A family that is receiving tenant-based or project-based assistance in a PHA's voucher program.

PHA-owned unit. A PHA-owned or controlled housing unit, as defined in 24 CFR 982.352(b).

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The voucher program under section 8 of the 1937 Act, including tenant-based or project-based assistance.

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected (in a competitive or non competitive selection).

Qualifying families (for purpose of exception to 25 percent per-building cap). *See* § 983.56(b)(2)(ii).

Reasonable rent. A rent determined pursuant to § 983.303 that is not more than rent charged:

(1) For comparable units in the private unassisted market; and

(2) For comparable unassisted units in the premises.

Rehabilitated housing. Housing units that exist on the proposal selection date, but do not substantially comply with the HQS at that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Rent to owner. The total monthly reasonable rent payable to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, including any maintenance and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services.) In the PBV program, the rent to owner is the sum of the tenant rent and the PHA housing assistance payment to the owner.

Responsible entity (RE) (for environmental review). The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

Single family building. A building with no more than four dwelling units (assisted or unassisted).

Site. The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single room occupancy (SRO) housing, congregate housing, group home, and manufactured home. Subpart M provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state's criteria must include a requirement that the individual has achieved a satisfactory grade upon a state-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and

Enforcement Act of 1989 (12 U.S.C. 3331–3352), the individual must comply with any additional standards for state-certified appraisers imposed by HUD.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant-paid utilities. Utility service that is not included in the tenant rent, and which is the responsibility of the assisted family.

Tenant rent. The amount payable monthly by the tenant as rent to the owner. The amount of the tenant rent equals the total tenant payment minus the applicable utility allowance for tenant-paid utilities for the unit occupied by the family.

Total tenant payment. The amount described in 24 CFR 5.628.

Utility allowance. The PHA allowance for the cost of tenant-paid utilities (except telephone) for a unit. The utility allowance is the PHA's estimate of the monthly cost of a reasonable consumption of utilities by an energy-conservative household, consistent with the requirements of the HQS.

Utility reimbursement. The amount, if any, by which the utility allowance for the cost of tenant-paid utilities exceeds the total tenant payment for the assisted family occupying the unit.

Wrong-size unit. A contract unit that is:

- (1) Overcrowded because of an increase in the household size; or
- (2) Larger than appropriate ("under-occupied") because of a change in the household size or composition. *See* § 983.259.

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

Civil money penalty. Penalty for owner breach of HAP contract. *See* 24 CFR 30.68.

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. *See* 24 CFR 5.105(c) and 24 CFR part 24.

Definitions. *See* 24 CFR part 5, subpart D.

Disclosure and verification of income information. *See* 24 CFR part 5, subpart B.

Environmental review. *See* 24 CFR parts 50 and 58 (*see also* provisions on PBV environmental review at § 983.58).

Fair housing. Nondiscrimination and equal opportunity. *See* 24 CFR 5.105(a).

Fair market rents. *See* 24 CFR part 888, subpart A.

Fraud. PHA retention of recovered funds. *See* 24 CFR part 792.

Funds. HUD allocation of voucher funds. *See* 24 CFR part 791.

Income and family payment. See 24 CFR part 5, subpart F (especially § 5.603 (definitions), § 5.609 (annual income), § 5.611 (adjusted income), § 5.628 (total tenant payment), § 5.630 (minimum rent), § 5.632 (utility reimbursements), § 5.634(a) (tenant rent), and § 5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project)).

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to an Agreement covering nine or more assisted units.

Lead-based paint. Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856). See 24 CFR part 35, subparts A, B, H, and R.

Lobbying restriction. Restrictions on use of funds for lobbying. See 24 CFR 5.105(b).

Noncitizens. Restrictions on assistance. See 24 CFR part 5, subpart E.

Program accessibility. Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 24 CFR parts 8 and 9.

Relocation assistance. Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). See 49 CFR part 24.

Section 3—Training, employment, and contracting opportunities in development. Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). See 24 CFR part 135.

Uniform financial reporting standards. See 24 CFR part 5, subpart H.

Waiver of HUD rules. See 24 CFR 5.110.

§ 983.5 Description of the project-based voucher program.

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. In the PBV program, the assistance is “attached to the structure.” (See description of the difference between “project-based” and “tenant-based” rental assistance at § 982.1(b) of this chapter).

(2) The PHA enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing.

(3) In the case of newly constructed or rehabilitated housing, the housing is

developed under an Agreement between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units.

(4) During the term of the HAP contract, the PHA makes rental assistance payments to the owner for units leased and occupied by eligible families.

(b) *How PBV is funded.* (1) If a PHA decides to operate a PBV program, the PHA’s PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA’s voucher ACC. This pool of funding is used to pay rental assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

(2) There is no special or additional funding for project-based vouchers. HUD does not reserve additional units for project-basing and does not provide any additional funding for this purpose.

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a project-based voucher program. HUD approval is not required.

§ 983.6 Maximum number of PBV units.

(a) The PHA may select owner proposals to provide project-based assistance for up to 20 percent of the baseline units in the PHA voucher program. PHAs are not required to reduce the number of PBV units selected under an Agreement or HAP contract if the number of baseline units are subsequently reduced.

(b) All project-based certificate and project-based voucher units for which the PHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for project-based certificate or project-based voucher assistance count against the 20 percent maximum.

(c) The PHA is responsible for determining the number of baseline units that are available for project-basing and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be provided relocation assistance at the levels described in and 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.

(2) The cost of required relocation assistance may be paid for with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds.

(b) *Real property acquisition requirements.* The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B.

(c) *Responsibility of PHA.* The PHA must require the owner to comply with the URA and 49 CFR part 24.

(d) *Definition of initiation of negotiations.* In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

§ 983.8 Equal opportunity requirements.

(a) The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a).

(b) The PHA must comply with PHA Plan civil rights certification submitted by the PHA in accordance with 24 CFR 903.70.

§ 983.9 Special housing types.

(a) *Applicability.* (1) For applicability of rules on special housing types at 24 CFR part 982, subpart M, see § 983.2.

(2) In the PBV program, the PHA may not provide assistance for shared housing, cooperative housing, manufactured home space rental, or the homeownership option.

(b) *Group homes.* A group home may include one or more group home units. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

§ 983.10 Project-based certificate program.

(a) *What is it?* “Project-based certificate program” means project-based assistance attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001, and in accordance with:

(1) The regulations for the project-based certificate program at 24 CFR part 983, codified as of May 1, 2001; and

(2) Section 8(d)(2) of the 1937 Act, as in effect before October 21, 1998 (the date of enactment of Title V of Public Law 105–276, the Quality Housing and Work Responsibility Act of 1998, codified at 42 U.S.C. 1437 *et seq.*).

(b) *What rules apply?* Units under the project-based certificate program are

subject to the provisions of 24 CFR part 983 codified as of May 1, 2001 (notwithstanding repeal of such provisions).

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

(a) *Procedures for selecting PBV proposals.* The PHA administrative plan must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§ 983.53 and 983.54), complies with the cap on the number of PBV units per building (§ 983.56), and meets the site selection standards (§ 983.57).

(b) *Selection of PBV proposals.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

(1) Competitive selection of a proposal. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude competition between or among owner proposals for PBV housing on different sites.

(2) Selection of a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (e.g., HOPE VI, HOME, and tax credit units), where the proposal has been selected in accordance with such program's competitive selection requirements.

(c) *Public notice of PBV competition.* If the PHA will be selecting proposals by competitive selection under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for competitive selection. 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 competitive selection must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

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

(e) *PHA-owned units.* A PHA-owned unit may only be assisted under the PBV program if the HUD field office or an independent entity approved by HUD reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

(f) *Public review of PHA selection decision documentation.* The PHA must make available for public inspection documentation regarding the basis for the PHA selection of a PBV proposal.

§ 983.52 Housing type.

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

§ 983.53 Prohibition of assistance for ineligible units

(a) *Ineligible unit.* The PHA may not attach or pay PBV assistance for units in the following types of housing:

- (1) Shared housing;
- (2) Units on the grounds of a medical, mental, or similar institution;
- (3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- (4) Units on the grounds of a penal, reformatory, or similar institution;
- (5) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- (6) Manufactured homes;
- (7) Cooperative housing.

(b) *High rise elevator project for families with children.* The PHA may not attach or pay PBV assistance to a high rise elevator project that may be occupied by families with children unless HUD determines there is no practical alternative. HUD may make this determination for a PHA's project-based voucher program, in whole or in

part, and need not review each project on a case-by-case basis.

(c) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing.

(d) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

§ 983.54 Prohibition of assistance for units in subsidized housing.

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

- (a) Public housing;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- (g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
- (j) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (k) A unit subsidized with any form of tenant-based rental assistance (as defined at § 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);
- (l) A unit with any other duplicative Federal, state, or local housing subsidy,

as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; a Federal, state, or local tax concession (such as relief from local real property taxes); or a tax credit.

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may only provide PBV assistance in accordance with HUD subsidy layering regulations (24 CFR part 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing 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.

(b) *When subsidy layering review is conducted.* The PHA may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(c) *Owner certification.* 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.

§ 983.56 Cap on number of PBV units in each building.

(a) *25 percent per building cap.* (1) Except as provided in paragraph (b) of this section, the PHA may not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building that will receive PBV assistance or other federal project-based housing assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the building.

(2) In calculating application of this cap, any units in the building receiving federal project-based assistance count against the cap—including units assisted or to be assisted under other HAP contracts or project-based assistance programs (e.g., section 8 loan

management or property disposition units or other PBV units).

(b) *Exception to 25 percent per building cap.* (1) *When PBV units are not counted against cap.* In the following cases, PBV units are not counted against the 25 percent per building cap:

- (i) Units in a single family building;
- (ii) Excepted units in a multifamily building.

(2) *Terms.* (i) "Excepted units" means units in a multifamily building set aside for occupancy and occupied by qualifying families.

(ii) "Qualifying families" means:

- (A) Elderly or disabled families; or
- (B) Families receiving supportive services under a voucher, project-based certificate, or public housing family self-sufficiency (FSS) program or families who are in compliance with their FSS contract of participation at the beginning of the assisted unit lease term. If a family has received FSS supportive services as a resident of an excepted unit and then completes its FSS contract of participation, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(3) *Set-aside for qualifying families.* (i) In rental of units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units for occupancy by qualifying families.

(ii) The PHA may refer only qualifying families for occupancy of excepted units.

(c) *Additional, local requirements promoting partially assisted buildings.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. For example, a PHA may:

(1) Establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per building cap of less than 25 percent.

§ 983.57 Site selection standards.

(a) *Applicability.* The site selection requirements in paragraph (d) of this section only apply to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section only apply to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing,

newly constructed housing, and rehabilitated housing.

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629) and HUD's implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063 (27 FR 11527; 3 CFR, 1959–1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107.

(3) The site meets the HQS site standards at 24 CFR 982.401(l).

(c) *PHA PBV site selection policy.* (1) The PHA administrative plan must establish the PHA's policy for selection of PBV sites in accordance with this section.

(2) The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

(3) The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA administrative plan.

(d) *Existing and rehabilitated housing site and neighborhood standards.* A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted,

standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

(e) *New construction site and neighborhood standards.* A site for newly constructed housing must meet the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and 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.

(3) A project may be located in an area of minority concentration only if:

(A) 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 (see paragraph (e)(3)(C), (D), and (E) of this section for further guidance on this criterion); or

(B) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(F) of this section for further guidance on this criterion).

(C) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(D) Units may be considered "comparable opportunities" if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require

approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(E) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(i) A significant number of assisted housing units are available outside areas of minority concentration.

(ii) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(iii) There are racially integrated neighborhoods in the locality.

(iv) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(v) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(vi) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(vii) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(F) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a "revitalizing area"). An "overriding housing need," however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of

circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction housing designed for elderly persons, travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 983.58 Environmental review.

(a) *HUD environmental regulations.* Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58.

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the "responsible entity" or "RE") is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable Federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

(2) If a PHA objects in writing to the RE's performing the federal environmental review, or if the RE declines to perform the review, then, HUD may perform the environmental review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the environmental review.

(c) *Limitations on actions before completion of the environmental review.*

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

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds; or

(ii) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

(2) HUD will not release funds for PBV assistance under this part if the PHA, the owner, or any other party commits funds under this part (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required).

(d) *PHA duty to supply information.* The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

(e) *Mitigating measures.* The PHA must require the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

§ 983.59 PHA-owned units.

(a) *Selection of PHA-owned units.* The selection of PHA-owned units must be done in accordance with § 983.51(e).

(b) *Inspection and determination of reasonable rent by independent entity.* In the case of PHA-owned units, the following program services may not be performed by the PHA, but must be performed instead by an independent entity approved by HUD.

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser; and

(2) Inspection of PHA-owned units as required by § 983.103(f).

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

(d) *Payment to independent entity and appraiser.* (1) The PHA may only compensate the independent entity and

appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services.

(2) The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

(a) *HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. 24 CFR 5.703 (physical condition standards) does not apply to the PBV program.

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982, subpart M, apply to the PBV program. (Shared housing, cooperative housing, manufactured home space rental and the homeownership option are not assisted under the PBV program.)

(c) *Lead-based paint requirements.* (1) The lead-based paint requirements at § 982.401(j) of this chapter do not apply to the PBV program.

(2) 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.

(d) *HQS enforcement.* Parts 982 and 983 of this chapter, do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall 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 part 8, subpart C.

(b) *Design and construction.* 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.

§ 983.103 Inspecting units.

(a) *Pre-selection inspection.* (1) *Inspection of site.* The PHA must examine the proposed site before the proposal selection date.

(2) *Inspection of existing units.* If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with the HQS.

(b) *Pre-HAP contract inspections.* The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.

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

(d) *Annual inspections.* (1) At least annually during the term of the HAP contract, the PHA must initially inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted towards meeting this annual inspection requirement.

(2) If more than 20 percent of the initially inspected contract units in a building fail the initial annual inspection, the PHA must reinspect 100 percent of the contract units in the building.

(e) *Other inspections.* (1) The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints

and any other information coming to its attention in scheduling inspections.

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in § 982.404(b) of this chapter.)

(3) The PHA supervisory quality control HQS inspections pursuant to § 982.405(b) of this chapter must include a representative sample of both tenant-based and project-based units.

(f) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance with § 983.59, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA, and to the HUD field office where the project is located.

(3) The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

This subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This subpart D does not apply to PBV assistance for existing housing.

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required by HUD headquarters (*see* § 982.162 of this chapter).

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

(c) *Description of housing.* (1) At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

- (i) Site;
- (ii) Location of contract units on site;

(iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(1)(viii) of this section.

(vii) Estimated initial rents to owner for the contract units;

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

(2) At a minimum, the housing must comply with the HQS. The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

§ 983.153 When Agreement is executed.

(a) *Prohibition of excess subsidy.* The PHA may not enter the Agreement with the owner until the subsidy layering review is completed (*see* § 983.55).

(b) *Environmental approval.* The PHA may not enter the Agreement with the owner until the environmental review is completed and the PHA has received the environmental approval (*see* § 983.58).

(c) *Prompt execution of Agreement.* The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner.

§ 983.154 Conduct of development work.

(a) *Development requirements.* The owner must carry out development work in accordance with the Agreement, and the requirements of this section.

(b) *Labor standards.* (1) In the case of an Agreement for 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 development of the housing.

(2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD.

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

(c) *Equal opportunity.* (1) *Section 3—Training, employment, and contracting opportunities.* The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(2) *Equal employment opportunity.* The owner must comply with Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR 1977 Comp., p. 393).

(d) *Eligibility to participate in Federal programs and activities.* The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(e) *Disclosure of conflict of interest.* The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

§ 983.155 Completion of housing.

(a) *Completion deadline.* The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing, and for the owner to submit required evidence of completion.

(b) *Required evidence of completion.* (1) *Minimum submission.* At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA and HUD:

(i) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and

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

(2) *Additional documentation.* At the discretion of the PHA or as required by HUD, the Agreement may specify additional documentation that must be submitted by the owner to evidence completion of the housing. For example, such documentation may include:

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

(ii) An architect's certification that the housing complies with:

(A) HUD housing quality standards;

(B) State, local, or other building codes;

(C) Zoning;

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

(E) Any additional design or quality requirements pursuant to the Agreement.

§ 983.156 PHA acceptance of completed units.

(a) *PHA determination of completion.* When the PHA has received owner notice that the housing is completed:

(1) The PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by the PHA under the Agreement.

(2) The PHA must determine if the owner has submitted all required evidence of completion.

(3) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

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

Subpart E—Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under this part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see § 982.162 of this chapter).

(b) *Purpose of HAP contract.* (1) The purpose of the HAP contract is to provide housing assistance payments for eligible families.

(2) The PHA makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. HUD provides funds to the PHA to make housing assistance payments to owners for eligible families.

§ 983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include 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;

(c) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to 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;

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per building cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and FSS families); and

(i) The initial rent to owner (for the first 12 months of the HAP contract term).

§ 983.204 When HAP contract is executed.

(a) *PHA inspection of housing.* (1) Before execution of the HAP contract,

the PHA must inspect each contract unit in accordance with § 983.103(b).

(2) The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the HQS.

(b) *Existing housing.* In the case of existing housing, the HAP contract must be executed promptly after PHA selection of the owner proposal and PHA inspection of the housing.

(c) *Newly constructed or rehabilitated housing.* (1) In the case of newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion (see §§ 983.155 and 983.156).

(2) In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement. Completion of the units by the owner, and acceptance of units by the PHA is subject to the provisions of the Agreement.

§ 983.205 Term of HAP contract.

(a) *Ten year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to ten 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 ten years.

(b) *Extension of term.* Within one year before expiration, the PHA may agree to extend the term of the HAP contract for an additional term of up to one year if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

(c) *Termination by PHA—insufficient funding.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by the PHA in accordance with HUD instructions. For purposes of this section, "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.

(2) The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD

instructions. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA, if the amount of the rent to owner for any contract unit, as adjusted on any anniversary date in accordance with § 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

§ 983.206 HAP contract amendments (to add or substitute contract units).

(a) *Amendment to substitute contract units.* At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit, and must determine the reasonable rent for such unit.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of baseline units as provided in 24 CFR 983.6, a HAP contract may be amended during the three year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same building. An amendment to the HAP contract is subject to all PBV requirements (e.g., compliance with Davis-Bacon wage rates during construction), except that a new PBV proposal competition is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(c) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract.

The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

§ 983.207 Condition of contract units.

(a) *Owner maintenance and operation.* (1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

(b) *Remedies for HQS violation.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The PHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

(c) *Maintenance and replacement—Owner's standard practice.* Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

§ 983.208 Owner responsibilities.

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. Section 982.452 of this chapter (Owner responsibilities) applies.

§ 983.209 Owner certification.

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

(a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.

(b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

(c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.

(d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

(e) The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.

(f) The amount of the housing assistance payment is the correct amount due under the HAP contract.

(g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

(h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.

(i) The family does not own or have any interest in the contract unit.

Subpart F—Occupancy

§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?*

(1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.

(b) *Protection of in-place families.* (1) The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be offered the opportunity to lease an appropriately sized project-based assisted unit in the project. (However, the PHA may deny assistance for the grounds specified in §§ 982.552 and 982.553 of this chapter.) Admission of such families is not subject to income-targeting under § 982.201(b)(2)(i). The PHA shall give such families priority for admission to the PBV program.

(c) *Selection from PHA waiting list.* (1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) The PHA may place families referred by the PBV owner on its PBV waiting list.

(6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at § 982.201(b)(2) of this chapter apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.

(7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (see 24 CFR 8.26 and 100.202).

(d) *Offer of PBV assistance.* (1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.

(2) If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

(3) The PHA may not take any of the following actions because an applicant has applied for, received or refused an offer of PBV assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

§ 983.252 PHA information for accepted family.

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(1) A description of how the program works; and

(2) Family and owner responsibilities.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family; and

(2) Family obligations under the program.

(c) *Providing information for persons with disabilities.* (1) If the family head or spouse is a disabled person, the PHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing.

(2) The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

§ 983.253 Leasing of contract units.

(a) *Owner selection of tenants.* (1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the PHA from the PHA waiting list.

(2) The owner may apply its own admission standards in determining whether to lease a unit to a family referred by the PHA.

(b) *Size of unit.* The contract unit leased to each family must be

appropriate for the size of the family under the PHA's subsidy standards.

§ 983.254 Vacancies.

(a) *Filling vacant units.* (1) The owner must promptly notify the PHA of any vacancy or anticipated vacancy in a contract unit. After receiving the owner notice, the PHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies.

(2) The owner must lease vacant contract units only to eligible families on the PHA waiting list referred by the PHA.

(3) The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

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

§ 983.255 Tenant screening.

(a) *PHA option.* (1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy.

(2) The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(b) *Owner responsibility.* (1) The owner is responsible for screening and selection of the family to occupy the owner's unit.

(2) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others;

(v) Compliance with other essential conditions of tenancy; and

(vi) Other factors determined by the owner.

(c) *Providing tenant information to owner.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and any immediately prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about criminal activity by family members.

(3) The PHA must give the family a statement of the PHA policy on providing information to owners. The statement must be included in the information package that is given to a family that is selected to receive PBV assistance.

(4) The PHA policy must provide that the PHA will give the same types of information to all PBV families and owners.

§ 983.256 Lease.

(a) *Tenant's legal capacity.* 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.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) 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, except as provided in paragraph (b)(4) of this section. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

(3) In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include word-for-word all provisions required by HUD.

(4) The PHA may review the owner's lease form to determine if the lease complies with state and local law, and if not, may require the owner to revise the form to comply with state and local law.

(c) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased unit);

(3) The term of the lease (initial term and any provision for renewal);

(4) The amount of the tenant rent. The tenant rent is subject to change during the term of the lease in accordance with HUD requirements.

(5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner.

(d) *Tenancy addendum.* (1) The tenancy addendum in the lease shall state:

(i) The program tenancy requirements (as specified in this part);

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

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

(e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of such change.

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

(f) *Initial term of lease.* (1) Except as provided in paragraph (f)(2) of this section, the initial lease term must be for at least one year.

(2) The PHA may approve a shorter initial lease term if the PHA determines that:

(i) Such shorter term would improve housing opportunities for the tenant; and

(ii) Such shorter term is the prevailing local market practice.

(g) *Lease provisions governing tenant absence from the unit.* The lease may specify a maximum period of tenant absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination of assistance actions due to family absence from the unit is subject to § 982.312 of this chapter, except that the HAP contract is not terminated if the family is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction for criminal activity or alcohol abuse.

Section 982.310 of this chapter applies with the exception that § 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, "good cause" does not include a business or economic reason or desire to use the unit for personal, family, or a non-residential rental purpose.)

§ 983.258 Security deposit: amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the 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 payment or reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the tenant owes under the lease.

(d) 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 as payment or reimbursement to the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

§ 983.259 Overcrowded, under-occupied, and accessible units.

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

(1) Wrong-size unit, or
(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.*

(1) If a family is occupying a:

(i) Wrong-size unit, or
(ii) Unit with accessibility features that the family does not require, and the

unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) Such continued housing assistance may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (e.g., by occupancy of a public housing unit),

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (e.g., under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant based voucher program), the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the expiration of a reasonable period as determined by the PHA.

§ 983.260 Family right to move.

(a) The family may terminate the assisted lease at any time after the first year of occupancy. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease, the family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity

for continued tenant-based rental assistance.

§ 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

(a) Except as provided in § 983.56(b), the PHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to § 983.56(a).

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly or disabled families; or to families receiving supportive services under a voucher, project-based certificate, or public housing family self-sufficiency (FSS) program; or to families who are in compliance with their FSS contract of participation at the beginning of the assisted unit lease term, for occupancy of the number of contract units set aside for occupancy by such families.

(c) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception (e.g., a family violating its contract of participation or the remaining members of a family that no longer qualifies for elderly or disabled family status) must vacate the unit within a reasonable period of time established by the PHA. A family otherwise in compliance with its family obligations will be provided a tenant-based voucher or comparable rental assistance in accordance with § 983.260 to move from the excepted unit.

Alternatively, if the project is partially assisted, the family need not move if it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with § 983.206(a). The assistance for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family violating its FSS contract of participation) may be terminated by the PHA.

Subpart G—Rent to Owner

§ 983.301 Determining the rent to owner.

(a) *Initial and redetermined rent.* (1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and § 983.302.

(2) The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

(3) The rent to owner is redetermined annually on each contract anniversary in accordance with this section and § 983.302.

(b) *Amount of rent to owner.* Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) The payment standard amount for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) *Rent to owner for certain tax credit units.* (1) This paragraph (c) applies if:

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1968 (see 26 U.S.C. 42); and

(ii) The contract unit is not located in a qualified census tract; and

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the payment standard amount for the unit bedroom size (as specified in the payment standard schedule for the PHA's tenant-based voucher program.);

(2) In the case of a contract unit described in paragraph (c)(1) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

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

(4) A "qualified census tract" is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) *Rent to owner for other tax credit units.* Except in the case of a tax credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units is determined pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine reasonable rent in accordance with § 983.303. The rent to owner for

each contract unit may at no time exceed the reasonable rent.

(f) *Use of payment standard amount and utility allowance schedule in determining amount of rent to owner.*

(1) *Amounts used.* (i) *Determination of initial rent (at beginning of HAP contract term).* When determining the initial rent to owner, the PHA shall use the payment standard amount on the PHA payment standard schedule and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30 day period immediately before the beginning date of the HAP contract.

(ii) *Redetermination of rent to owner (at annual anniversary).* When redetermining the rent to owner at the annual anniversary date of the HAP contract, the PHA shall use the payment standard amount on the PHA payment standard schedule and the utility allowance schedule in effect at the annual anniversary date of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30 day period immediately before the annual anniversary date of the HAP contract.

(2) *Payment standard schedule and PHA utility allowance schedule.* (i) The PHA may not establish or apply different payment standard amounts for the project-based voucher program. The same PHA payment standard schedule applies to both the tenant-based and project-based voucher programs. Any HUD-approved exception payment standard amount under § 982.503(c) of this chapter applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the project-based voucher program.

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

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner and the annual redeterminations at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with § 983.59. The PHA must use the rent to owner determined by the independent entity.

§ 983.302 Annual redetermination of rent to owner.

(a) *Review prior to annual anniversary.* The PHA must redetermine the rent to owner at the annual

anniversary of the HAP contract in accordance with § 983.301. The PHA must review the rent to owner before the annual anniversary of the HAP contract to determine whether the rent to owner must be increased, decreased, or left unchanged on the annual anniversary.

(b) *Rent increase.* (1) The PHA may not make any rent increase other than an increase in the rent to owner as determined at the annual redetermination pursuant to § 983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

(2) The owner must request any increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.

(3) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* If there is a decrease in the rent to owner, as established at the annual anniversary in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(d) *Notice of annual rent redetermination.* Rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§ 983.301 and 983.302). The PHA notice of the annual adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of twelve 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.

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of twelve calendar months from the annual anniversary of the HAP contract.

(3) See § 983.206(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent as determined by the PHA.

(b) *Redetermination.* The PHA must redetermine the reasonable rent:

(1) At least annually;

(2) Whenever there is a five percent 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 in effect one year before the contract anniversary;

(3) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(4) Whenever the HAP contract is amended to substitute a different contract unit in the same building; and

(5) Whenever there is any other change that may substantially affect the reasonable rent.

(c) *How to determine reasonable rent.*

(1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) *Comparability analysis.* (1) For each unit type, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) *Owner certification of comparability.* By accepting each

monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.58, rather than by the PHA. Reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

§ 983.304 Other subsidy: effect on rent to owner.

In addition to the rent limits established in accordance with § 983.301 and § 982.302 of this chapter, the following restrictions apply to certain units.

(a) *HOME.* For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

(b) *Subsidized projects.* (1) This subsection applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

(ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (b)(1) of this section.

(c) *Combining subsidy.* Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See § 983.55.

(d) *Other subsidy: PHA discretion to reduce rent.* At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

(e) *Prohibition of other subsidy.* For provisions that prohibit PBV assistance

to units in certain types of subsidized housing, see § 983.54.

§ 983.305 Rent to owner: effect of rent control and other rent limits.

In addition to the rent reasonableness limit and other rent limits under this rule, the amount of rent to owner also may be subject to rent control or other limits under local, State, or Federal law.

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

(a) *When payments are made.* (1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with § 983.352, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) *Calculating amount of payment.* The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) *Prompt payment.* The housing assistance payment by the PHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

(e) *Owner compliance with contract.* To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provision of the HAP contract, the owner does not have a right to receive housing assistance payments.

§ 983.352 Vacancy payment.

(a) *Payment for move-out month.* If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if the

PHA determines that the vacancy is the owner's fault.

(b) *Vacancy payment at PHA discretion.* (1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (b)(2) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

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

(3) The PHA may only make vacancy payments to the owner if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and the date when the family moved out (to the best of the owner's knowledge and belief);

(ii) 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;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

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

§ 983.353 Tenant rent; payment to owner.

(a) *PHA determination.* (1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.* (1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum

amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The

PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§ 983.354 Other fees and charges.

(a) *Meals and supportive services.* (1) Charges for meals or supportive services may not be included in the rent to owner. The value of meals and supportive services may not be included in the calculation of reasonable rent.

(2) Except for assisted living, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Dated: February 17, 2004.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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