

Chapter 17

PROJECT-BASED VOUCHERS (PBV) And RENTAL ASSISTANCE DEMONSTRATION UNITS (RAD)

PART I: PROJECT BASED-VOUCHERS

17.1.A. INTRODUCTION

The Project-Based Voucher Program was enacted in 1998 as part of the Quality Housing and Work Responsibility Act (QHWRA), with substantial revisions under the FY 2001 Appropriations Act. Based on a proposed rule and public comment, HUD published the Final Rule on November 14, 2005 and amended the rule in July, 2014. Further guidelines for implementation are to be found in PIH Notices.

The Program may be administered by Housing Authorities that already administer a Tenant-Based Voucher Program under an Annual Contributions Contract (ACC) with HUD. The significant difference between the programs is that assistance is “attached to the structure” in the Project-Based Program while assistance is considered “portable” in the Tenant-Based Program. Under HUD Regulations at 24 CFR 983, a Housing Authority may commit up to 20% of its budget authority under the ACC to Project-Based Vouchers. Participation is allowed at the discretion of the individual Housing Authority. No additional funding is provided by HUD for the administration of the Program.

The IHA will utilize this Program to further its mission of creating and preserving affordable housing in its jurisdiction. This chapter defines the procedures and the criteria for acceptance of units to the program. The administrative procedures are set for per the HUD Final Rule. The chapter also explains regulatory differences between the Project-Based and Tenant-Based Voucher Programs that are significant for owners and participants.

The IHA will operate a project-based voucher (PBV) program with up to the maximum twenty percent (20%) of its Housing Choice Voucher Program budget authority. In the event HUD increases the level of allowed budget authority that may be used for PBV assistance, the IHA may increase the PBV program up to the maximum level allowed by HUD.

PBV program is subject to the regulations at 24 CFR part 983, which includes regulations governing policies and procedures that are not specified in this Administrative Plan.

In addition to the policies and procedures stated below, and other PBV regulations stated at 24 CFR part 983, PHA's PBV program is subject to most of the requirements of the Housing Choice Voucher Program, as specified in this Administrative Plan and in other HUD regulations.

Description of the IHA PBV Program Commitment and Priorities [24 CFR 983.5]

IHA's PBV program is designed to ensure that PBV assistance is used to support goals that could not be equally achieved through the use of tenant-based voucher assistance. IHA's PBV program has is committed to the following priorities:

1. Expand the supply of affordable housing and increase the affordable housing choices of residents within the jurisdiction
2. Support projects which further revitalize neighborhoods, promote the deconcentration of poverty and generally provide increased housing and economic opportunities.
3. Work with the community to identify and serve populations with particular housing needs, including but not limited to the provision of supportive services to promote self-sufficiency and supportive housing for families with disabilities.

IHA will periodically issue a Request for Proposals (RFP) for the PBV Program to owners and developers of existing, newly constructed, or rehabilitated multi-family housing. The RFP and selection process will be administered in compliance with the IHA Procurement Policy. Sites will be selected according to the criteria set forth in this chapter of the IHA Administrative Plan.

IHA will enter into a one to fifteen-year HAP contract with the owner(s) of existing housing or newly constructed or rehabilitated housing selected under the Program criteria. The contract is renewable for a five (5) year term with a total term up to twenty years in accordance with the regulations. During the term of the HAP contract, IHA will make housing assistance payments to the owner for units leased and occupied by eligible families.

In the case of newly constructed or rehabilitated housing sites which are not completed prior to their selection by IHA, the development must be completed under an Agreement between the owner and the IHA. In the Agreement, IHA will agree to execute a HAP contract after the owner completes the construction or rehabilitation of the units according to HQS and the other standards set forth in the IHA PBV Program.

17.1.B. WHEN THE TENANT-BASED VOUCHER APPLIES [24 CFR 983.2].

24 CFR Part 982 is the basic regulation for the tenant-based voucher program. All of part 982 applies to the PBV program except for the following:

- (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. IHA may not provide PBV program assistance to these types of housing (24 CFR 983.9)
- (4) Other exceptions as specified in 983.2.

17.1.C. PBV DEFINITIONS [24 CFR 983.3]

Admission. The point when the family becomes a participant in the IHA'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 IHA, 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 IHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under the Program. When the development is completed by the owner in accordance with the Agreement, IHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section.

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in IHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross 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.

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.)

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 IHA and owner for use under the PBV program.

IHA-owned unit. A dwelling unit owned by IHA that administers the voucher program. IHA-owned means that IHA or its officers, employees, or agents hold a direct or indirect interest in

the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

Proposal selection date. The date IHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in this chapter of the IHA Administrative Plan.

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

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.

17.1.D. OTHER FEDERAL REQUIREMENTS [24 CFR 983.4]

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.

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

Fair housing. Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.

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

Income and family payment. See 24 CFR part 5, subpart F various sections including Sec. 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.

Non-citizens. 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.

Other Federal requirements listed in 983.4.

17.1E. MAXIMUM AND MINIMUM AMOUNT OF PBV ASSISTANCE [24 CFR 983.6]

IHA's PBV program is funded with a portion of the budget authority available under the IHA's voucher ACC. This pool of funding is used to pay housing assistance for both tenant-based and project-based voucher units and to pay IHA administrative fees for administration of tenant-based and project-based voucher assistance. There is no special or additional funding or units available from HUD for project-based vouchers.

It is entirely IHA's discretion to operate the PBV program. HUD approval is not required. IHA will determine annually whether to issue an RFP for the PBV Program, and the number of vouchers to make available. IHA will issue no more project-based vouchers annually than are available as a result of unit turnover. Total existing and new project based project-based HAP contracts may not exceed the maximum of 20% of IHA's HCV funding under the ACC.

17.1F. UNIFORM RELOCATION ACT [24 CFR 983.7]

All households displaced as a result of the Agreement or HAP contract 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.

The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. IHA will require the owner to comply with the URA and 49 CFR part 24. 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 IHA.

17.1.G. PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]

Periodically, IHA will publicly request Project-Based Voucher proposals from property owners and developers. IHA Procurement Policy and the procedures set forth in this chapter will be strictly followed through all stages of the proposal selection process.

Before IHA selects a PBV proposal, IHA will determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is

eligible housing (Sec. 983.53 and 983.54), complies with the cap on the number of PBV units per building (Sec. 983.56), and meets the site selection standards (Sec. 983.57).

IHA will select PBV proposals by either of the following two methods:

- (1) IHA Request for PBV Proposals (RFP). IHA will not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

Method (1) procedures- Request for Proposals Process

IHA will select PBV proposals through a public Request for Proposals (RFP) process.

IHA's to offer PBV proposals for consideration by IHA. The public notice procedures will include publication of the general notice in accordance with the IHA's standard public notice procedures.

The public notice of the PBV RFP will specify the submission deadline. The public notice will inform owners or developers seeking project-based assistance of the availability of the full RFP document at IHA's main offices.

The full RFP document will provide detailed information about proposal submission and selection procedures and will be available upon request of interested parties at IHA office's. Property owners may submit PBV proposals in accord with the proposal submission guidelines stated in the full RFP document. Proposals will be selected according to explicit criteria specified in the full RFP document, following the selection criteria stated below. Under no circumstances will IHA's RFP selection criteria limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

The IHA, IHA-affiliates, or developers engaged by the IHA to redevelop IHA property, may submit PBV proposals and be awarded vouchers under any RFP published by the IHA or be awarded vouchers if the proposed project was competitively selected under another federal, state, or local housing assistance program in accordance with 24 CFR 983.51(b)(2). Proposals submitted by the IHA, an IHA-affiliate, or developer engaged by the IHA to redevelop public housing, must conform to the submission guidelines stated in the full RFP document and shall be evaluated under the same selection criteria as all other proposals. No IHA, or IHA-affiliate, employee responsible for preparing the response to the RFP shall be involved in the evaluation or selection of proposals or the award of the vouchers. Provided, however, that any selection process for IHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

(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., sites which were competitively selected by the Louisiana Housing Development for LIHTC), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Method (2) Procedures- Alternative Competitive Processes

In lieu of the above RFP process, HUD regulations permit IHA to select a PBV 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, where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance, or in other circumstances as allowed by the regulations or other PBV requirements.

Proposals for PBV assistance which have been independently selected for housing assistance as described above may be submitted to IHA on a rolling basis. Additionally, the IHA may also directly contact specific owners that have already been selected for federal, state or local housing assistance based on a previously held competition to inform them of available PBV assistance.

IHA's selection of proposals under the alternative competitive processes may be contingent upon the owner providing additional information required according to IHA's selection requirements and HUD and IHA requirements for PBV assistance. IHA will inform owners of any additional requirements at the time their proposals are submitted. Housing owned by IHA, a IHA-affiliate, or a developer engaged by IHA may also be awarded vouchers under this Section. Provided, however, that any selection process for IHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

Selection Criteria

Proposals will be selected according to the following selection criteria:

- The housing must promote one of IHA's priorities for its PBV program;
- The proposal must comply with all HUD program regulations and requirements;
- The property must be eligible housing in accordance with 24 CFR 983.53 and 983.54.
- The proposal must comply with the HUD cap on PBV units per building at 24 CFR 983.56;
- The housing site must meet the site selection standards detailed at 24 CFR 983.57;
- Proposals for new construction or rehabilitation projects must demonstrate capacity, experience, and successful outcomes in prior projects that indicate their ability to complete the construction work effectively and within the proposed schedule;

Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low income persons and families;

Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services. More detailed information about minimum supportive services guidelines is provided later in this addendum.

Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project's long-term viability.

The owner is good standing with HUD and IHA.

IHA reserves the right to reduce the number of project-based units that have been requested.

Public Notice and Review of IHA Proposal Selection

IHA will provide public notice of PBV proposal selections, including publication of public notice in accordance with the IHA's standard public notice procedures.

IHA will make documentation available for public inspection regarding the basis for IHA's selection of a PBV proposal.

Public notice of IHA request for PBV proposals. If IHA selects proposals by RFP, then IHA will provide public notice of the RFP and deadline in a manner consistent with the IHA Procurement Policy.

IHA notice of owner selection. IHA will give written notice to the party that submitted a selected proposal within 60 days of the RFP submission deadline. The notice of selection will include a summary of the requirements that must be met before IHA can enter into an Agreement and/or HAP contract with the owner.

IHA will give public notice of such selection within 30 days of notice of the selection to the owner. Public notice procedures will be consistent with IHA's standard public notice procedures.

IHA-owned units. An IHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the IHA-owned units were appropriately selected based on the selection procedures and criteria specified in this Administrative Plan. Under no circumstances may PBV assistance be used with a public housing unit.

Public review of IHA selection decision documentation. The IHA will make documentation available for public inspection regarding the basis for the IHA selection of a PBV proposal.

17.1.H. PROHIBITION OF ASSISTANCE FOR INELIGIBLE UNITS [24 CFR 983.53]

IHA will not attach or pay PBV assistance for units in the following types of housing:

- (1) Shared housing;
- (2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- (3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care.

However, IHA 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 that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- (5) Manufactured homes;
- (6) Cooperative housing;
- (7) Transitional Housing.
- (8) High-rise elevator project for families with children.
- (9) Owner-occupied units.

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

IHA will not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- (a) A public housing dwelling unit;
- (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, IHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (g) A Section 202 project for elderly or non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, (12 U.S.C. 1701q);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) A Section 101 rent supplement project (12 U.S.C. 1701s);

(j) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 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 IHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

17.1.I. SUBSIDY LAYERING REVIEW [24 CFR 983.55]

IHA will provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance 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.

IHA will 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.

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

17.1.J. CAP ON NUMBER OF PBV UNITS IN EACH BUILDING [24 CFR 983.56]

25 percent per building cap. Except as provided in paragraph (b) of this section, IHA will 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 during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in a building.

Excepted Units. In the following cases, PBV units are not counted against the 25 percent per building cap:

- (1) Units in a single-family building (1-4 units);
- (2) Excepted units in a multifamily building.

“Excepted units” means units in a multifamily building that are specifically made available for qualifying families. “Qualifying families” means:

- (A) Elderly or disabled families; or
- (B) Families receiving supportive services.

Set-aside for qualifying families. In leasing units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families. IHA may refer only qualifying families for occupancy of excepted units.

17.1.K. SUPPORTIVE SERVICES FOR FAMILIES IN EXCEPTED UNITS AND GUIDELINES AND REQUIREMENTS [24 CFR 983.56]

Pursuant to HUD regulations, project-based assistance will ordinarily be limited to 25% of the units contained within the proposed project. However, for projects housing elderly families, disabled families or for projects providing supportive services, each unit that is occupied by elderly, disabled or families receiving qualified supportive services shall be an “excepted unit” and shall not apply towards the 25% cap. Furthermore, buildings with four (4) or fewer units are excluded from the 25% cap.

Qualifying Supportive Services

- Participation in any of the IHA’s Housing Choice Voucher Program FSS programs
- Child care –child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;
- Transportation transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;
- Education remedial education; education for completion of secondary or post secondary schooling, English as Second Language (ESL) classes;
- Employment job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;
- Personal Welfare – substance/alcohol abuse treatment and counseling;
- General health care and services–mental health services; HIV/AIDS related services; behavior assessments
- Household skills and management training in homemaking and parenting skills; household management; money management; nutrition; obtaining and retaining government, financial and medical benefits; family counseling;
- Legal Services
- Other services any other services and resources, including case management, or reasonable accommodations for individuals with disabilities, that the IHA determines to be appropriate in assisting families to achieve economic independence and self- sufficiency.

It is not necessary that the above services be provided by or at the project. However, to qualify for as an “excepted unit” a family must have at least one member receiving at least one qualifying supportive service. Proposals that include supportive services should identify the particular services that will be provided and the service provider(s). IHA will evaluate proposals

including supportive housing units on the basis of the specific services provided, the intensity of the services and the target population to be served. IHA will also evaluate supportive housing proposals based on the history and track record of the proposed service providers and the need for the supportive housing at the proposed site.

Supportive services for exempted units must be in addition to those provided by IHA. They may be coordinated by a supportive services coordinator employed by the owner or management-company, or provided by a qualified non-profit service agency as determined by IHA.

Supportive services provided by IHA include the Family Self-Sufficiency Program, the computer literacy classes, job readiness classes, computer-based job training and adult basic education classes offered onsite in IHA's public housing development. All tenant-based and project-based voucher residents, regardless of disabilities or limitations, are eligible for these services.

Supportive services proposed by the owner, property manager, or a non-profit service agency must be specified in the response to the project-based RFP. If the services are approved and the proposed units are accepted as exempt by IHA, the services are described as a required component in the Agreement and HAP contract. To qualify as an excepted unit, the owner or provider agency must demonstrate a reasonable likelihood of funding for the approved supportive services for families occupying the unit throughout the term of the HAP contract.

To qualify as an IHA approved supportive service in excepted units, services must be directed to helping the family achieve the ability to live independently as possible in consideration of their disability. It must be based on case management which accurately assesses family needs, makes appropriate referrals for serving those needs, encourages family participation, and accurately tracks and records family participation and progress on a monthly basis. It is not necessary that the services be provided at or by the project, if they are approved by IHA.

Participation in the approved supportive service is mandatory for families of excepted units. To qualify for an excepted unit, a family must have at least one adult member receiving at least one qualifying supportive service. IHA will not require participation in medical or disability-related services as a condition of living in an excepted unit, other than drug and alcohol treatment in the case of current abusers.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received supportive services as defined here, and successfully completes the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the supportive services requirement as outlined herein, IHA will take the actions provided under Sec. 983.261(d), and the owner may terminate the lease in accordance with Sec. 983.257(c).

At the time of initial lease execution between the family and the owner, the family and IHA will sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require IHA to

terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

IHA will monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. IHA will visit sites with excepted units annually to verify continued operation of the program and compliance with the requirements of the HAP contract. This site visit will include an interview with the program or case manager, and a review of a representative portion of case files and the system for tracking family participation.

Family Responsibility

At the time of the initial lease execution between the family and the owner, the family and IHA must sign a Statement of Family Responsibility. The Statement of Family Responsibility must contain all family obligations including the family's participation in a service program as contemplated within this Administrative Plan.

At the family's annual income recertification, IHA will require written documentation from the service provider or the owner indicating the family's continued compliance with the terms of the supportive services plans. Project owners will also be expected to provide some level of monitoring of the services provided. This monitoring should be detailed in the proposal, and will be evaluated as part of the selection process. At IHA's discretion, IHA may request additional documentation of compliance with supportive service obligations.

The unit eligible for status as an "excepted unit" so long as at the time of the occupying family's initial tenancy at least one member of the family is receiving a qualifying supportive service. If the family completes an FSS contract of participation or the supportive services requirement, the unit will continue to count as an "excepted unit" for as long as the family resides in that unit.

Family Failure to Comply with Supportive Service Requirements

Failure without good cause by a family to complete or comply with its supportive service participation requirements will result in termination of the project based assistance for that unit and may result in the termination of the lease by the project owner.

17.1.L. HUD AND IHA SITE SELECTION CRITERIA [24 CFR 983.57]

IHA will only select proposals which demonstrate consideration of and compliance with the site selection standards at 24 CFR 983.57, as such may be amended or revised, which shall ensure that selected proposals will meet the above program goals of deconcentrating poverty, expanding housing and economic opportunities, and otherwise providing needed housing support.

IHA will 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 IHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with IHA Agency Plan and the IHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a IHA will consider the following:

(a) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

(b) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

(c) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

(d) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;

(e) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(f) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, IHA will consider whether in the past five years there has been an overall decline in the poverty rate;

(g) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(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 parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

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, and 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.

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 (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; or
- (b) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi) of this section for further guidance on this criterion).
- (c) As used in paragraph (3)(i) of this section, "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," as used in paragraph (3)(i) of this section, 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.

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 that 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 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.

17.1.M. ENVIRONMENTAL REVIEW [24 CFR 983.58]

Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The City of Kansas City, Missouri is the “responsible entity” or “RE” 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. If IHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself. (24 CFR 58.11).

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

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

- (1) The RE 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;
- (2) The RE has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- (3) HUD has performed an environmental review under 24 CFR part 50 and has notified IHA in writing of environmental approval of the site.

HUD will not approve the release of funds for PBV assistance under this part if IHA, the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before

IHA submits and HUD approves its request for release of funds (where such submission is required).

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

17.1.N. IHA-OWNED UNITS [24 CFR 983.59]

Selection of IHA-owned units. The selection of IHA-owned units must be done in accordance with the proposal selection procedures set forth in this chapter of the Administrative Plan (24 CFR 983.51(e)). In the case of IHA-owned units, the following program services may not be performed by the IHA, but must be performed instead by an independent entity approved by HUD.

- (1) *Determination of rent to owner for the IHA-owned units.* Rent to owner for IHA-owned units is determined pursuant to Sec. 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 IHA-owned units as required by Sec. 983.103(f).

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

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

17.1.O. HOUSING QUALITY STANDARDS [24 CFR 983.101]

- (1) *HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.
- (2) *HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982 apply to the PBV program.
- (3) Lead-based paint requirements.

(a) The lead-based paint requirements at Sec. 982.401(j) do not apply to the PBV program.

(b) 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.

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

(5) This section establishes the minimum federal housing quality standards for PBV housing. However, IHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement.

17.1.P. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]

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. IHA 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. 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.

17.1.Q. INSPECTING UNITS [24 CFR 983.103]

IHA will examine the proposed site before the proposal selection date. If the units to be assisted already exist, IHA will 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, IHA may not execute the HAP contract until the units fully comply with the HQS.

IHA will inspect each contract unit before execution of the HAP contract. IHA may not enter into a HAP contract until every unit covered by the contract fully complies with the HQS.

Turnover inspections. Before providing assistance to a new family in a contract unit, IHA will inspect the unit. IHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

Annual/Biennial inspections. At least annually/biennially during the term of the HAP contract, IHA will 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 are not counted toward meeting this annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a building fail the initial inspection, IHA will re-inspect 100 percent of the contract units in the building.

Other inspections. IHA may inspect contract units whenever it determines an inspection is needed to comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. IHA will take into account complaints from residents and any other information coming to its attention in scheduling inspections.

Follow-up Inspections. IHA will 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 24 CFR 982.404(b)).

Quality Control Inspections. In conducting supervisory quality control HQS inspections, IHA shall include a representative sample of both tenant-based and project-based units.

Inspecting IHA-owned units. In the case of IHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance the above section on IHA-owned units (24 CFR 983.59). The independent entity must furnish a copy of each inspection report to IHA and to the HUD field office where the project is located. IHA will 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 IHA as owner.

17.1.R. THE AGREEMENT TO ENTER INTO A HAP CONTRACT (24 CFR 983.152 - .154)

For units that do not substantially comply with HQS on the proposal selection date, an agreement to enter into a Housing Assistance Payment (HAP) Contract may be made. This includes newly constructed or rehabilitated housing sites which are not completed prior to their selection by IHA. In such cases the development must be completed under an Agreement between the owner and the IHA. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162). In the Agreement the owner agrees to develop the contract units to comply with HQS, and IHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, IHA will enter into a HAP contract with the owner for the contract units.

At a minimum, the Agreement must include the following for units to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

- (1) Site description;
- (2) Location of contract units on site;
- (3) Number of contract units by area (square feet) and number of bedrooms and bathrooms;

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

(5) 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;

(6) 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,

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

(8) Anticipated term of the initial HAP contract

(9) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the site plan and rehabilitation work write up and, where determined necessary by the IHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications. At a minimum, the housing must comply with the HQS. IHA 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.

(10) Deadlines for completion by the owner, and for the owner to submit the required evidence of completion.

In the case of an Agreement for nine or more contract units to be newly constructed or substantially rehabbed, the owner must certify that it's contractors and subcontractors will pay Davis-Bacon wages to laborers and mechanics employed in the construction of the contract units. They must also certify they will comply with Section 3 of the Housing and Urban Development Act of 1968.

The Agreement will include the requirements in 24 CFR 983.154 including certification by the Owner that they and other project principles are not on the US General Services Administration list of parties excluded from federal procurement and non-procurement programs. In addition, the owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP Contract, or HUD regulations.

The Agreement will specify that, at a minimum, the housing must comply with the HQS and obtain a final certificate of occupancy from the City of Kansas City, Missouri after passing City inspections for compliance with the City's adopted building and property maintenance codes.

IHA may not enter the Agreement with the owner until the subsidy layering review is completed by HUD and the environmental review is completed and the IHA has received the environmental approval from the RE. The Agreement will be executed promptly by IHA after it gives notice of proposal selection to the owner, and receives the subsidy layering review approval from HUD and the environmental review approval from RE.

17.1.S. COMPLETION AND ACCEPTANCE OF UNITS [24 CFR 983.155 - 983.156]

The owner must complete the housing in accordance with the terms of the Agreement. Evidence of completion will include the following in the form and manner required by IHA:

- (1) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement;
- (2) Owner certification that the owner has complied with the labor standards and equal opportunity requirements set forth in the Agreement;
- (3) A permanent certificate of occupancy from the City of Kansas City, Missouri
- (4) An architect's certification that the housing complies with:
 - (a) HUD Housing Quality Standards;
 - (b) All applicable building codes;
 - (c) Zoning;
 - (d) The rehabilitation work write-up (for rehabilitated housing) or the plans and specifications (for newly constructed housing); or any additional design or quality requirements required by IHA pursuant to the Agreement.

When IHA has received owner notice that the housing is completed:

- (1) IHA will 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 IHA under the Agreement.
- (2) IHA will determine if the owner has submitted all required evidence of completion.
- (3) If the work has not been completed in accordance with the Agreement, IHA will not enter into the HAP contract.

A request for IHA approval of any change in the project design or configuration which alters the terms of the Agreement (e.g. a reduction in the size or number of units) must be received by IHA 30 days in advance of the planned implementation of the change during construction. IHA shall have 10 business days to review such request. IHA may terminate the Agreement if such change, in the sole opinion of IHA, substantially alters the scope of the project, reduces the quality of the housing to be provided, or increases IHA's administrative requirements.

The owner must inform IHA 30 days in advance of any projected delay in the completion of the site, and request an extension of the Agreement. At IHA's discretion, the Agreement may be extended for a 30 day period. IHA may extend the Agreement for a total of three 30 day periods if it determines at the end of each period that there is reasonable cause for the delays. Extensions beyond 90 days are not permitted and IHA will advise the owner to re-submit the site in a future IHA PBV proposal round when it is completed.

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

17.1.T. THE HAP CONTRACT [24 CFR 983.202 – 983.206]

After IHA approves and accepts the units, it will enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162). IHA will make 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 contract term.

The HAP contract must specify:

- (1) The total number of contract units by number of bedrooms;
- (2) 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;
- (3) 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.
- (4) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
- (5) 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;
- (6) 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;
- (7) The HAP contract term;
- (8) The number of units in any building that will exceed the 25 percent per building cap (as described in Sec. 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and
- (9) The initial rent to owner (for the first 12 months of the HAP contract term).

Before execution of the HAP contract, IHA will inspect each contract unit in accordance with the above section in this Chapter regarding inspecting units (24 CFR 983.103(b)). IHA may not enter into the HAP contract until IHA has determined that the unit complies with the HQS.

In the case of existing housing, the HAP contract must be executed promptly after IHA selection of the owner proposal and IHA inspection and acceptance of the housing.

In the case of newly constructed or rehabilitated housing the HAP contract must be executed after IHA 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. In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement.

Term of HAP contract.

The IHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years 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 15 years. In the case of IHA-owned units, the term of the HAP contract must be agreed upon by the IHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

IHA Policy

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

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the IHA may extend the term of the contract for an additional term of up to 15 years if the IHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. The IHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the IHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of IHA-owned units, any extension of the term of the HAP contract must be agreed upon by the IHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)]

IHA Policy

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

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

Extension of Term. Within one year before expiration, the IHA may agree to extend the term of the HAP contract for an additional term of up to five years if IHA 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. The maximum total term of the contract with extensions is 15 years.

Termination by IHA--Insufficient Funding. The HAP contract must provide that the term of the IHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by IHA 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.

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, IHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such notice shall be delivered promptly after making such a determination. Such action by IHA shall be implemented in accordance with HUD instructions.

Termination by Owner--Reduction below Initial Rent. The owner may terminate the HAP contract, upon notice to the IHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 CFR 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.

Amendment to Substitute Contract Units. At the discretion of IHA 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, IHA will inspect the proposed substitute unit and must determine the reasonable rent for such unit.

Amendment to add contract units. At the discretion of the IHA, 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 authorized budget authority 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., rents are reasonable), except that a new PBV request for proposals 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.

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.

17.1.U. OWNER RESPONSIBILITIES [24 CFR 983.207 – 983.209]

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. 24 CFR 982.452 (Owner responsibilities) applies. By execution of the HAP contract, the owner makes the same certifications that are made in the HAP contract under the tenant-based voucher program. These certifications include that each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the IHA, and the lease is in accordance with the HAP contract and HUD requirements, and that the rent each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

Owner maintenance and operation. The owner must maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with IHA and in the lease with each assisted family. Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

At the discretion of the IHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by IHA (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.

Remedies for HQS or other HAP contract violation. IHA will vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS and other requirements of the HAP contract. If IHA determines that a contract unit is not in accordance with HQS or other HAP contract requirement, IHA 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.

17.1.V. TENANT SELECTION [24 CFR 983.251]

IHA may select families who are participants in the IHA's tenant-based voucher program and families who have applied for admission to the voucher program. As with the tenant based

program, not less than 5 percent of the families admitted to IHA's tenant based and project-based voucher programs during the fiscal year from the IHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) also apply to the total of admissions to the IHA's tenant based and project-based voucher programs.

Protection of In-Place Families. The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date. 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 placed on the IHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (IHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the IHA's waiting list. IHA shall give such families first priority for admission to the PBV program. This protection does not apply to families occupying the site that are not eligible to participate in the program on the proposal selection date.

Selection from the IHA Waiting List. Applicants who will occupy PBV units must be selected by IHA from the IHA waiting list. The IHA must select applicants from the waiting list in accordance with the policies in the IHA Administrative Plan.

Waiting List Management

IHA will establish individual site-based waiting lists for each PBV project selected.

IHA will offer to place applicants who are listed on the waiting list for tenant-based assistance on the site based waiting list(s) for PBV assistance upon the opening of such site based waiting list.

IHA will open and close the site-based waiting lists pursuant to the procedures outlined in Administrative Plan.

An applicant may be placed on both the tenant-based and project-based waiting list. At the time of application, IHA will offer to place applicants who are listed on the tenant-based waiting list on the PBV waiting list, and vice versa.

IHA will establish criteria or preferences for occupancy of particular sites on the PBV waiting list. IHA may place families referred by the PBV owner on its PBV waiting list. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, IHA will first refer families who require such features to the owner (see 24 CFR 8.26 and 100.202).

Preference for services offered. In selecting families, IHA will give preference to disabled families who need services offered at a particular project. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. The preference shall be limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing; who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents shall not be required to accept the particular services offered at the site.

Preferences

IHA may establish separate site-based preferences for each PBV project. These preferences may include those for elderly or disabled families, or preferences related to supportive housing programs. Preferences may include those outlined in the Administrative Plan. Residents on the tenant based waiting list will be informed of any applicable preferences for each PBV project at the time of the initial opening of the site-based waiting lists. Applicants for assistance shall also be informed of all applicable preferences for each list at the time of application.

For existing housing, any in-place tenant that qualifies will receive the preference for in-place residents at 24 CFR 983.251(b).

Any preferences that would be necessary to the operation of the project, or required by a funding source must be disclosed in the proposal.

Supportive Housing Related Preferences

If PBV units include special accessibility features for persons with disabilities, IHA will first refer families who require such accessibility features to the owner. For other units that are designated to receive supportive services, IHA may give preference to disabled families who need services offered at a particular project. Project owners may advertise the project as offering services for a particular type of disability, however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

Only families that meet the following limits will be eligible for any supportive housing preference:

- Families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing
- Families that without appropriate supportive services will not be able to obtain or maintain themselves in housing

- Families for whom such services cannot be provided in a non-segregated setting.

Disabled residents shall not be required to accept the particular services offered at the project.

IHA is prohibited from granting preferences to persons with specific disabilities (see 24 CFR 982.207(b)(3)),

Tenant Selection

When notified of a vacancy in a PBV unit, IHA will refer tenants in the following order:

First, applicants that meet the site-based preferences based on time and date of application

Second, applicants that meet the tenant-based assistance preferences as set forth in this Administrative Plan based on time and date of application

Third, all other applicants based on the time and date of the application

Tenant Screening

IHA's procedures for tenant screening for the PBV program are not different than procedures for screening tenant-based applicants, which are provided in IHA's Administrative Plan.

IHA's policy for providing information to owners about families referred to PBV units is not different than IHA's policies for tenant-based applicants, which are provided in IHA's Administrative Plan.

Procedures for Families Occupying a Unit of the Wrong Size or an Accessible Unit Whose Accessibility Features Are Not Quite Required by the Family

If a family is determined by IHA to occupy a wrong-sized unit, or a unit with accessibility features that the family does not require (and such unit is needed by a family that requires the accessibility features) then IHA must promptly notify the family and the project owner of this determination and must offer continued assistance in another appropriately sized or accessible unit.

Continued assistance after unit, which may include, but is not limited to the following options:

- PBV assistance in an appropriate-sized unit (in the same building or in another building);
- Other project-based housing assistance (including occupancy of a public housing unit)
- Tenant-based rental assistance under the voucher program; or
- Other comparable public or private tenant-based assistance (e.g., under the HOME program).

For families who have been notified that they occupy a wrong-size unit, and offered continued assistance:

If the IHA offers the family the opportunity receive tenant-based rental assistance under the voucher program, the IHA must terminate the HAP payments for a wrong-sized unit at expiration of the term of the family's voucher (including any extensions granted by the IHA).

If the IHA offers the family the opportunity for another form of continued housing assistance (as provided above), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the IHA, or both, the IHA must terminate the HAP payments for the wrong-sized unit, at the expiration of a reasonable period as determined by the IHA.

Right to Move

A family residing in a PBV unit may terminate the assisted lease any time after the first year of occupancy and request comparable tenant-based assistance from the IHA.

Should a family terminate its PBV lease and request alternate assistance, the IHA shall offer the family the opportunity for continued tenant-based rental assistance, or if such assistance is not immediately available upon termination of the lease, the IHA will give the family priority to receive tenant-based rental assistance at the next available opportunity for such tenant-based rental assistance.

If the family terminates the assisted lease before the end of the first year of occupancy, the family will not be entitled to tenant-based assistance or priority for such assistance under this section. However, the family may reapply for tenant-based assistance or other project based assistance as otherwise provided in this Administrative Plan.

Inspections

The IHA will inspect PBV units in accordance with the regulations at 24 CFR 983.103 and Housing Quality Standards (HQS) at 24 CFR 983.101 and 982.401 and this Administrative Plan:

- Pre-Selection. For new construction or rehabilitated units, the IHA will inspect the site prior to making the proposal selection. For existing housing, all units must substantially comply with HQS prior to proposal selection.
- Prior to entering the HAP Contract. All units must fully comply with HQS standards prior to executing the HAP Contract.
- Turnover. Each time a family moves out of a PBV unit, the IHA will inspect the unit before providing assistance to a new family.
- Annual Inspections. The IHA will inspect at least 20% of the contract units in each building, turnover inspections are not counted towards meeting the 20%. If more than

- 20% of the inspected units fail inspection, the IHA must re-inspect all units in the building.
- As needed. The IHA will inspect units as needed to ensure that the units comply with HQS. The IHA will take into account complaints and other information when scheduling inspections.

IHA-owned units shall be inspected by an independent third party approved by HUD.

Rent

Rent to the owner shall be set in accordance with 24 CFR 983.301, such that the initial rent shall not exceed: 1) 110% of the applicable fair market rent for the unit minus the utility allowance; 2) the reasonable rent; or 3) the rent requested by the owner.

The tenant portion of the rent shall be determined in accordance with 24 CFR 983.353 and the policies in this Administrative Plan.

The IHA shall not make vacancy payments for units that are unoccupied beyond the month of move-out. Owners may request vacancy payments for the month of move out provided that the owner properly notifies the IHA of the vacancy and provided that the vacancy was not caused by any action of the owner.

Rent shall be re-determined in accordance with 24 CFR 983.302:

- Upon the owner's request upon the annual anniversary of the HAP Contract.
- Upon the owner's request upon the annual anniversary of the HAP Contract.
- When there is a 5% or greater decrease in the published fair market rents

Additional Requirements- if completing the action through RAD Rental Assistance Demonstration Program ("RAD")

At the current time- IHA is not exploring RAD but in the next 5 years, IHA will be looking to move forward with either RAD or Voluntary Streamlining of its Public Housing units.

None of the IHA's PBV projects have not been converted under HUD's Rental Assistance Demonstration Program (RAD) to the PBV program from either 1) the public housing program under the first component of RAD or 2) an expired Rent Supplement or RAP Contract under the second component of RAD. All projects converted to PBV Assistance under RAD are subject to the requirements of HUD PIH Notice 2012-32, as such may be amended from time to time (the RAD Requirements). The RAD Requirements are in addition to, and may modify, the requirements for PBV projects as set forth in this Chapter. For any PBV project converted under RAD, in the event of a conflict between the RAD Requirements and the requirements of this Chapter, the RAD Requirements shall control.

Additionally, for any PBV project that converted from public housing under RAD, the additional tenant protections shall apply. These provisions shall not apply to any project converted to PBV assistance under the second component of RAD or any non-RAD PBV project. Note that in the RAD context “owner” may also refer to the IHA.

Termination Notification. The owner will renew all leases for RAD PBV families unless cause exists. Further, the owner will provide adequate written notice of termination of the lease which shall not be less than:

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

Grievance Process.

1. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi), and Chapter 16 of this Administrative Plan, an opportunity for an informal hearing must be given to residents at PBV Project converted under RAD for any dispute that a resident may have with respect to the owner’s actions in accordance with the individual’s lease that adversely affect the resident’s rights, obligations, welfare, or status:
 - For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the hearing will be conducted in accordance with the procedures outlined in Chapter 16 of this Administrative Plan
 - For any additional hearings required under RAD, an impartial member of the owner’s staff shall perform the hearing.
2. An informal hearing will not be required for class grievances or to disputes between residents not involving the owner or the IHA. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the owner or IHA.
3. The owner shall give residents notice in the house rules or the lease of resident’s ability to request an informal hearing for circumstances that do not entitle the residents to a hearing under Chapter 16 of this Administrative Plan.

4. The owner shall provide opportunity for an informal hearing before an eviction.

Supportive Services Guidelines and Requirements.

Pursuant to HUD regulations and this Administrative Plan, project-based assistance will ordinarily be limited to 25% of the units contained within the proposed project, however, this limit has been increased to 50% in accordance with RAD requirements.

Projects housing elderly families, disabled families or for projects providing supportive services, each unit that is occupied by elderly, disabled or families receiving qualified supportive services will continue to constitute “excepted units” and shall not apply towards the 50% cap. Furthermore, buildings with four (4) or fewer units are excluded from the 50% cap.

For RAD Projects relying upon excepted units receiving supportive services, initial residents living in a unit subject to a RAD conversion cannot be required to utilize such services, and so failure to participate in a social services program may not be a cause for lease termination with respect to such initial residents.

Advertisement of the Site. The owner may advertise the site as offering services for a particular type of disability; however, the site must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

Offer of PBV Assistance. If a family refuses IHA's offer of PBV assistance, such refusal does not affect the family's position on the IHA waiting list for tenant-based assistance. 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 IHA waiting list for tenant-based assistance.

IHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:

- (a) Refuse to list the applicant on IHA waiting list for tenant-based assistance;
- (b) Deny any admission preference for which the applicant is currently qualified;
- (c) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under IHA selection policy;
- (d) Remove the applicant from the waiting list for tenant-based voucher assistance.

Tenant Screening. IHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, IHA may screen applicants for family behavior and suitability for tenancy consistent with the same procedures that are applied to the tenant-based voucher program. IHA may deny admission to an applicant based on such screening. IHA will conduct such screening of applicants in accordance with policies stated in the IHA Administrative Plan.

17.1.W. IHA INFORMATION TO ACCEPTED FAMILIES [24 CFR 983.252]

Before a family accepts an offer of PBV assistance, IHA will give the family the same information provided in the IHA tenant-based program. This will include an oral briefing with a description of how the program works and Family and owner responsibilities, and a packet with information on how IHA determines the total tenant payment for a family, family obligations under the program; and applicable fair housing information.

Providing Information for Persons with Disabilities. If the family head or spouse is a disabled person, IHA will take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including alternative formats.

Providing Information for Persons with Limited English Proficiency. IHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

17.1.X. OWNER SELECTION OF TENANTS [24 CFR 983.253, 983.255]

During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by IHA from the IHA waiting list.

The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection. The contract unit leased to each family must be appropriate for the size of the family under the IHA's subsidy standards.

Owner Screening of Tenants. The owner is responsible for screening and selection of the family to occupy the owner's unit. 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:

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

Providing Tenant Information to the Owner. IHA will give the owner:

- (a) The family's current and prior address (as shown in the IHA records); and

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

When a family wants to lease a dwelling unit, IHA may offer the owner other information in IHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. IHA will give the family a description of IHA policy on providing information to owners. IHA will give the same types of information to all owners.

17.1.Y. VACANCIES [24 CFR 983.254]

As in the tenant-based program, IHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy. The owner must promptly notify the IHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, IHA will make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on IHA waiting list referred by the IHA.

Reducing the 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 IHA to fill such vacancies), IHA 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 have been vacant for such period.

17.1.Z. DETERMINING AND RE-DETERMINING THE RENT TO OWNER [24 CFR 983.301 - 302]

(1) *Initial and re-determined rents.*

- (a) 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.
- (b) The rent to owner is re-determined at the owner's request for a rent increase in accordance with this section. The rent to owner is also re-determined at such time when there is a five percent or greater decrease in the published FMR in accordance with 24 CFR 983.302.

(2) *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:

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

(3) *Rent to owner for certain tax credit units.*

- (a) This paragraph applies if:
 - (i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);
 - (ii) The contract unit is not located in a qualified census tract;
 - (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 applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.
- (b) In the case of a contract unit described in paragraph (3)(a) 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.
- (c) 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).
- (d) 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.

(4) *Rent to owner for other tax credit units.* Except in the case of a tax credit unit described in paragraph (3)(a) of this section, the rent to owner for all other tax credit units is determined pursuant to paragraph (2) of this section.

(5) *Reasonable rent.* IHA shall determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent.

(6) *Use of FMRs and utility allowance schedule in determining the amount of rent to owner.*

- (a) Amounts used.
 - (i) *Determination of initial rent* (at beginning of HAP contract term). When determining the initial rent to owner, IHA shall use the most recently published

FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, IHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

(ii) *Re-determination of rent to owner.* When re-determining the rent to owner, IHA shall use the most recently published FMR and IHA utility allowance schedule in effect at the time of re-determination. At its discretion, IHA may use the amounts in effect at any time during the 30-day period immediately before the re-determination date.

(b) *Exception payment standard and IHA utility allowance schedule.*

(i) Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) 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 PBV program.

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

(7) *IHA-owned units.* For IHA-owned PBV units, the initial rent to owner and the annual re-determination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with 24 CFR 983.59. IHA will use the rent to owner established by the independent entity.

(8) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by 90 days prior written notice to IHA. The request must be submitted in the form and manner required by IHA.

(9) IHA 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.

(10) *Rent decrease.* If there is a decrease in the rent to owner, as established in accordance with 24 CFR 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(11) *Notice of rent re-determination.* Rent to owner is re-determined by written notice by IHA to the owner specifying the amount of the re-determined rent (as determined in accordance with 24 CFR 983.301 and 983.302). IHA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

(12) *Contract year and annual anniversary of the HAP contract.*

- (a) The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.
- (b) 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 12 calendar months from the annual anniversary of the HAP contract.
- (c) See Sec. 24 CFR 983.206(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

17.1. AA. REASONABLE RENT [24 CFR 983.303].

(1) *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 IHA.

(2) *Re-determination.* IHA will re-determine the reasonable rent:

- (a) Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;
- (b) Whenever IHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- (c) Whenever the HAP contract is amended to substitute a different contract unit in the same building; and
- (d) Whenever there is any other change that may substantially affect the reasonable rent.

(3) *How to determine reasonable rent.*

- (a) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.
- (b) In determining the reasonable rent, IHA will 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.

(4) *Comparability analysis.*

- (a) For each unit, the IHA 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.

(b) IHA will retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(c) The comparability analysis may be performed by IHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any IHA 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.

(5) *Owner certification of comparability.* By accepting each monthly housing assistance payment from IHA, 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 IHA information requested by IHA on rents charged by the owner for other units in the premises or elsewhere.

(6) *Determining reasonable rent for IHA-owned units.*

(a) For IHA- owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with Sec. 983.58, rather than by IHA. Reasonable rent must be determined in accordance with this section.

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

17.1. BB. OTHER SUBSIDY: EFFECT ON RENT TO OWNER [24 CFR 983.304]

(1) *General.* In addition to the rent limits established in accordance with 24 CFR 983.301 and .302, the following restrictions apply to certain units.

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

(3) *Subsidized projects.*

(a) This paragraph (3) 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) A project receiving low-income housing tax credits;
- (vi) Any other type of federally subsidized project specified by HUD.

(b) The rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program.

(4) *Combining subsidy.* Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See 24 CFR 983.55.

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

(6) *Prohibition of other subsidy.* For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see 24 CFR 983.54.

17.1. CC. IHA PAYMENT TO OWNER OF OCCUPIED UNIT [24 CFR 983.351]

(1) *When payments are made.*

(a) During the term of the HAP contract, IHA 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.

(b) Except for discretionary vacancy payments in accordance with 24 CFR 983.352, IHA 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).

(2) *Monthly payment.* Each month, IHA 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.

(3) *Calculating amount of payment.* The monthly housing assistance payment by IHA 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).

(4) *Prompt payment.* The housing assistance payment by IHA 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 IHA agree on a later date.

(5) *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 provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17.1. DD. VACANCY PAYMENT [24 CFR 983.352.]

(1) *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 IHA determines that the vacancy is the owner's fault.

(2) *Vacancy payment at IHA discretion.*

(a) At the discretion of IHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (2)(b) of this section) for an IHA-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.

(b) The vacancy payment to the owner for each month of the maximum two-month period will be determined by IHA, 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 cover only the period the unit remains vacant.

(c) IHA may make vacancy payments to the owner only if:

(i) The owner gives IHA prompt, written notice certifying that the family has vacated the unit and containing 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 IHA to verify that the owner is entitled to the vacancy payment.

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

17.1. EE. TENANT RENT: PAYMENT TO OWNER [24 CFR 983.353]

(1) *IHA determination.*

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

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

(2) *Tenant payment to owner.*

- (a) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).
- (b) The amount of the tenant rent as determined by IHA 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 additional charge to the tenant, in accordance with the HAP contract and lease.
- (c) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by IHA. The owner must immediately return any excess payment to the tenant.
- (d) 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 non-payment of IHA housing assistance payment.

(3) *Limit of IHA responsibility.*

- (a) IHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. IHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.
- (b) IHA 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. IHA 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.

(4) *Utility reimbursement.*

- (a) If the amount of the utility allowance exceeds the total tenant payment, IHA 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.
- (b) IHA 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.
- (c) If IHA chooses to pay the utility supplier directly, the IHA must notify the family of the amount paid to the utility supplier.

17.1. FF. OTHER FEES AND CHARGES [24 CFR 983.354]

(1) *Meals and supportive services*

- (a) Except as provided in paragraph (1)(b) of this section, 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) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges

may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

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