



**The Housing Authority of the County of DeKalb
(HACD)
310 N. 6th Street
DeKalb IL, 60115**

**REQUEST FOR PROPOSALS (RFP)
RFP #P16-041**

**Housing Choice Voucher Program
Project-Based Assistance for new development, rehabilitated housing units
and existing housing units**

Request for Proposals Issued on January 2, 2017

With Final Deadline for Submission at 4:30 P.M. CST on January 31, 2017

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THE HOUSING AUTHORITY OF THE COUNTY OF DEKALB

**REQUEST FOR PROPOSALS (RFP) #P16-041
HOUSING CHOICE VOUCHER PROGRAM PROJECT-BASED ASSISTANCE
FOR NEW DEVELOPMENT, REHABILITATED HOUSING UNITS AND EXISTING
HOUSING UNITS**

1. INTRODUCTION – SCOPE OF REQUEST

The Housing Authority of the County of DeKalb (HACD) has identified a need in the jurisdiction of the HACD which is the entire County of DeKalb, Illinois, for certain affordable housing opportunities for families and individuals.

To this end, the HACD will make available project-based vouchers (vouchers) in its Housing Choice Voucher Program (HCVP) for new construction, existing housing that requires substantial rehabilitation, and/or existing housing that does not require substantial rehabilitation with efficiency, one, two-, three- and four- bedroom units located in DeKalb County, Illinois. In the Project-Based Program, the assistance is “attached to the structure.” During the term of the Housing Assistance Payment (HAP) contract, the HACD makes housing assistance payments to the Owner for units leased and occupied by eligible individuals/families.

Each proposal and the units in them will be graded on their own merit and not in competition with any other proposals. Award of vouchers will not be made to any project/property/unit that fails to receive a minimum of 60 points in the Comparative Evaluation Criteria component of this RFP.

In accordance with 24 Code of Federal Regulations (CFR) 983.255, the HACD has no responsibility or liability to the Owner or any other person for the family’s behavior or suitability for tenancy.

It is the policy of the HACD to encourage participation by Owners of units located outside areas of poverty or minority concentration to participate in the HCVP. The HACD has identified the “North West Corridor” within the City of DeKalb as an area of poverty or minority concentration and in support of deconcentration efforts will not accept proposals for property in this location.

These vouchers **will not** be available for Section 202/811 properties and/or units receiving any other type of rental subsidy from local, state, county, and/or federal sources.

The award of the vouchers is subject to approval by the HACD Board of Commissioners (Board). The HACD intends to award 15-year contracts with up to five (5) one-year options to renew. Payments under the HAP contract are subject to the future availability of appropriations and future availability of funding under the Annual Contributions Contract (ACC).

The HACD invites Offerors to submit written proposals regarding the property(ies) for which they seek vouchers. An Owner may include multiple properties in a single response to this RFP. It is not necessary to file a separate response for each property for which vouchers are sought.

The HACD hereby incorporates HUD regulations found at 24 CFR 983 set out in **Appendix B** into the requirements of this RFP.

The HACD will accept proposals for the following Categories of projects located in DeKalb County:

Proposal Category 1: New efficiency, one-, two-, three-, and four-bedroom housing units. A “new unit” is a unit that, at the time of the HACD’s written notice of selection for project-based assistance, has not yet received a Certificate of Occupancy from the issuing jurisdiction.

Proposal Category 2: Existing efficiency, one-, two-, three-, and four -bedroom units requiring substantial rehabilitation. An “existing unit” is a unit that, at the time of the HACD’s written notice of selection for project-based assistance, will require **more than \$1,000** per assisted unit in renovation costs in order to comply with Housing Quality Standards (including the unit’s prorated share of any work required on common areas or systems).

Proposal Category 3: Existing efficiency, one-, two-, three-, and four - bedroom units that do not require substantial rehabilitation. An “existing unit” is a unit that, at the time of the HACD’s written notice of selection for project-based assistance, **will not require more than \$1,000 per assisted unit in renovation costs** in order to comply with Housing Quality Standards (including the unit’s prorated share of any work required on common areas or systems).

Special Needs Populations: Through collaboration with governmental officials, social service providers and other members of the DeKalb County Community, the HACD has identified populations of individuals/families who may benefit from case management services tied to project-based housing opportunities. Case management services are not exclusively defined as clinical/medical case management services, but may include wraparound services that address educational issues, career enhancement, job readiness, housekeeping, etc. Some of the special needs populations identified in community meetings included: homeless/chronically homeless families; disabled families requiring accessible features; families with members experiencing mental illness, traumatic brain injuries, autism, intellectual disabilities, substance abuse issues; as well as the elderly, ex-offenders, veterans, and youths aging out of foster care. There likely are other special needs populations that may benefit from project-based assistance. Although this RFP does not require collaboration between the Owners and service providers, collaborations are encouraged in an effort to fill gaps in housing opportunities in the community.

2. RFP TERMS AND CONDITIONS

The Deadline for Submission is at 4:30 p.m. CST on **January 31, 2017**.

All proposals must comply with the provisions of the HACD procurement policy, Illinois law, 24 CFR 85.36, and applicable HUD procurement regulations.

The HACD reserves the right to modify this proposed allocation of vouchers and may increase or decrease the total allocation and/or the allocation of vouchers for particular bedroom sizes at its sole discretion based upon the response to this RFP. The HACD also reserves the right to determine the number of vouchers to award to an Offeror. The HACD may award vouchers for some, but not all, units contained in a proposal.

By submission of a proposal and in the event that an Offeror's proposal is accepted, the Offeror agrees to enter into a contract with the HACD that incorporates all of the requirements of this RFP and the HCVP. The Offeror further accepts all of the terms and conditions of this RFP.

All successful applicants must complete an environmental review prior to proceeding.

If the selected Offeror fails to enter into a HAP contract and/or AHAP contract within sixty (60) days following the HAP funding award announcement, then the HACD reserves the right to award the HAP contract to one or more other successful Offerors.

The HACD reserves the right to reject any and all proposals and to waive any technical or informal defects therein. The HACD reserves the right to reject any proposal if it is determined that such proposal does not represent the proposal of an Offeror that is competent to serve as a landlord in the HCVP.

The HACD will not be liable for any costs incurred by the Offerors prior to the issuance of a HAP contract award.

The HACD may award one or more HAP contracts (**Appendix C**) and/or AHAP contracts (**Appendix D**) to the responsible and responsive Offeror(s) whose proposal(s) is(are) considered to be the most advantageous to the HACD, taking into consideration minimum and comparative evaluation criteria set forth in the RFP. At the HACD's sole discretion it may determine that no award shall be made.

Offerors' responses to this RFP may be modified only by written and sealed communication with Michelle Perkins, Executive Director of the HACD.

Offeror agrees to indemnify, hold harmless, and defend the Housing Authority of the County of DeKalb, its Commissioners, employees, officers and agents, from and against all liabilities, claims, penalties, forfeitures, suits and the cost and expenses incident thereto (including, but not limited to the cost of defense, settlement, judgment, and reasonable attorney's fees), which Housing Authority of the County of DeKalb may hereafter incur, become responsible for, or pay out as a result of death or bodily injury or property damage to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders for work done pursuant to the terms of this agreement, except liability for personal injury, property damage and/or loss of life or property caused by the sole negligence of the Housing Authority of the County of DeKalb.

All proposals submitted in response to this RFP will become the property of the HACD and will not be returned.

3. GENERAL INSTRUCTIONS

A. Communication

In order to maintain a fair and impartial RFP process, the HACD will avoid private communication with prospective Offerors during the entire procurement process, with the exception of providing response to questions properly submitted to the Procurement Department as noted earlier in this RFP. Offerors shall not attempt to query members of the HACD Board, staff, and others who may have information about the RFP. Any questions about the RFP must be submitted in writing to Michelle Perkins, Executive Director, sperkins@dekcohousing.com 815-758-2692 x124. Clarification of what is already in the RFP may be given individually. If there is an actual addition, or deletion of any part of the RFP, an addendum will be issued per Section B below. If there are questions about the Project-Based Voucher Program in general, the Offeror may be allowed to have a discussion with HCVP personnel.

B. RFP Addenda

The HACD reserves the right to issue addenda to this RFP. If it becomes necessary for the HACD to provide clarification or additional information, to answer questions which have been communicated, or to revise any part of this RFP after it is released, the HACD will provide a written addendum and post it on the HACD website, www.dekcohousing.com. The addendum shall be deemed a part of this RFP and will supersede the original RFP requirements and standards. It shall be the Offeror's responsibility to check the HACD website for such addenda before submitting their proposal. See **Appendix J** for Frequently Asked Questions (FAQ) we have already compiled.

C. Pre-Contractual Expenses

“Pre-contractual expenses” include, but are not limited to, any expense incurred by an Offeror in the preparation and submission of a proposal in response to this RFP and engagement in any other RFP-related activities prior to the date of a contract award.

The HACD shall not, under any circumstances, be liable for any pre-contractual expenses incurred by an Offeror. An Offeror shall not include any such expense in its proposal.

D. Proposed Contract(s)

An Offeror selected for contract award (Landlord) shall be required to sign a Housing Assistance Payments (HAP) Contract (**Appendix C**) for Proposal Category 3 or an Agreement to Enter into Housing Assistance Payments (AHAP) Contract with the HACD for Proposal Categories 1 and 2 (**Appendix D**).

4. PROPOSAL FORMAT AND CONTENT

A. Presentation

The proposal shall be typed and bound, with tabs clearly identifying each section. Lengthy narrative is discouraged; the presentation should be brief and concise.

The form, content and sequence of the proposal should follow the outline presented below in Sections 4.B and 4.C of this RFP.

In order to be considered by the HACD, a proposal must be date-stamped or bear a handwritten inscription by an authorized HACD representative confirming receipt.

B. Proposal Submission

The Original proposal (so marked) and three (3) copies shall be enclosed in a sealed envelope. The Offeror shall clearly label the envelope as follows:

Proposal #P16-041 for HCVP Project-Based Assistance
Name of Offeror (Firm and/or Individual)

The Offeror shall submit proposal to:

Michelle Perkins, Executive Director
Housing Authority of the County of DeKalb
310 N. 6th Street
DeKalb IL 60115

Proposals received after stated date and time shall be considered nonresponsive and will not be considered.

A proposal shall constitute a firm offer subject to acceptance by the HACD, and may not be withdrawn for a period of ninety (90) days following the last day to accept proposals.

C. Proposal Content

The Proposal shall include the following information, marked by numbered tabs:

Tab 1 – Letter of Transmittal

The Letter of Transmittal (Letter) shall be addressed to Michelle Perkins, Housing Authority of the County of DeKalb, 310 N. 6th Street, DeKalb, IL 60115. The Letter shall be signed by a company/ agency official or other person authorized to bind the Offeror (Official). The Letter should include the Official's name, address, telephone number, fax number, e-mail address, and identify all parties to the proposal. The Letter should also acknowledge any RFP addenda which have been issued. It shall be the

Offeror's responsibility to check the HACD website www.dekcohousing.com, for such addenda before submitting their proposal.

The Letter should provide information about the Offeror including background information about the Offeror's company/agency if applicable, including date of founding, legal form (sole proprietorship, partnership, corporation/state of incorporation), and for-profit or nonprofit status.

The Letter must clearly state the optimal number of vouchers sought and the minimum number that the Offeror will accept. The Letter must also state that the units will be available for occupancy **no later than sixty (60) days for existing units and one hundred and eighty (180) days for new construction. The HACD may elect in its sole discretion to extend this occupancy deadline upon written request.**

Finally, the Letter must indicate whether or not any of the parties to the proposal at any time have been disbarred or otherwise prevented from participation in HUD-funded contracts.

Tab 2 – Table of Contents

Include a table of contents for material contained in the proposal.

Tab 3 – Minimum Evaluation Criteria Certification

Include the Minimum Evaluation Criteria Certification that is marked as **Appendix E**, signed by the Official defined in Section 4.C, Tab 1, of this RFP.

Tab 4 – Property Description

It is expected that Offerors will propose different types of units located in different types of settings. The HACD would like to know as much about the units and their particular settings as possible. Some units may be located in large developments; others may be duplex units; others may be single-family homes. In this tabbed section, please provide the following information describing the proposed units, the development in which they will be located, and the property.

This tabbed section should clearly describe each unit and the development/ associated property for which the Offeror seeks a voucher(s) including, but not limited to, the following information:

a. Property Description

- Street address, city, state, zip code, Census Tract
- Physical description of site, including acreage and access to roads
- Proof of site control or ownership
- Proof of utility service
- Zoning of site, and proof that current zoning supports proposed developments/units

- Evidence that site is free from environmental hazards
- Neighborhood characteristics and nearby amenities (proximity to workplace opportunities, public transportation, medical facilities, retail locations, schools and educational facilities, civic locations, recreational areas and facilities).
- Photos, surveys and/or GIS Maps of site

b. Development Description

- Basic description, including number and type of units and buildings and construction type
- Photos, sketches or renderings of buildings/units
- Site layout plan
- Site accessibility and visitability for individuals with mobility impairments
- Unit's/development's amenities including security services/measures in place, availability of laundry rooms, community rooms, recreational facilities
- Off-street parking, garages
- Any other amenities that enhance tenants' quality of life
- Proposal development team, including proposed ownership entity (will be more extensive or detailed for projects proposing new construction)
- Development financial pro-forma (project sources and uses)
- Operating financial pro-forma (income and expense after completion)
- Information on the income ranges and demographics of anticipated resident household
- Documentation of the demand and need in the housing market area for the proposed units

c. Unit Descriptions

- Unit types (e.g. townhomes, flats, single family detached, duplex, etc.) and numbers
- Unit sizes and numbers of bedroom
- Accessibility features proposed for those with mobility and audio/visual impairments, and number of such units
- Unit age (if existing)
- Last Major Modernization/Rehabilitation Work, if existing
- Energy efficient and sustainable ("green") development information
- Include a photo of the interior of unit type (existing) or proposed floor plans (new construction)
- Each unit under consideration within a development must be assigned a specific number or letter/number combination to identify that unit for evaluation purposes. Any drawings or photos of individual units should bear the same designation.

d. Supportive Services (if applicable)

- Name, address, contact information of service provider
- A description of the service provider's experience
- Types of services to be offered

- Cost and frequency of services and location of services offered

e. Vouchers Sought

Specify the number of vouchers sought for each bedroom size at each development and specify the minimum number of vouchers that the Offeror will accept at each development.

For example, "The Offeror seeks project-based assistance for three (3) one-bedroom units at King's Court and one (1) two-bedroom unit at XYZ Gardens."

Tab 5 – References

Provide the names, addresses, and telephone numbers of three individuals/businesses whom the HACD may contact as references for the Offeror's ability to serve as a Project-Based landlord and/or developer. If supportive services will be provided in conjunction with the project-based units, provide the names, addresses and telephone numbers of three individuals/businesses whom the HACD may contact as references for the service provider to service the property's clientele and provide positive outcomes.

Tab 6 – Mandatory Affidavits and Certification Forms

Include the following mandatory forms in the order listed below:

- Minimum Evaluation Criteria Certification (**Appendix E**)
- Certifications and Representations of Offerors - Non-Construction Contract (Form HUD-5369-C) (**Appendix F**)
- Corporate Certification or Partnership Certificate (**Appendix G**)
- Noncollusion Affidavit (**Appendix H**)

The Offeror should complete each form and sign and notarize the form when required. The Offeror should mark a form "Not Applicable" where appropriate.

5. PROJECT-BASED VOUCHERS – GENERAL INFORMATION

This information is offered to assist Offerors in understanding the terms of the Program.

- A. If it is approved, the HACD will maintain a separate waiting list for the project in accordance with the HACD's Administrative Plan that is available for review at the HACD's Central Office located at 310 N. 6th Street, DeKalb, IL 60115 or on the HACD's website at www.dekcohousing.com.
- B. In determining an appropriate rental assistance payment for a unit assisted under the Project-Based Program, the HACD will examine just those costs associated with the housing component of the unit. Costs related to supportive services associated with the unit, if any, may not be considered when establishing reasonable rental assistance payments for the unit.
- C. The gross rent for the unit is the amount of assistance for rent and tenant-provided utilities. The gross rent shall not exceed the amounts in the HACD's Voucher Payment Standards set forth in **Appendix I**. Rents may be adjusted during the term of the HAP contract; however, the adjusted rents must be reasonable in comparison with rents charged for comparable units in the private, unassisted local market.

6. PROPOSAL EVALUATION AND VOUCHER AWARD

A. Evaluation Committee

The Evaluation Committee will consist of three (3) members and will be responsible for developing a recommendation to the HACD Board. The Evaluation Committee may designate non-voting technical advisors in its evaluation process.

B. Evaluation Process – An Overview

The Evaluation Committee will conduct a review of the Minimum Evaluation Criteria. **Proposals that do not meet the Minimum Evaluation Criteria will be disqualified from further consideration.**

The Evaluation Committee shall next conduct an evaluation using the Comparative Evaluation Criteria set forth in Section 6.D of this RFP. The Evaluation Committee shall arrive at a rating using the designated scoring system. If a proposal contains multiple developments, each development will be evaluated separately and will be assigned a composite rating. Each proposal and the units in them will be graded on their own merit and not in competition with any other proposals.

C. Minimum Evaluation Criteria

The proposal must comply with HUD program regulations and requirements including a determination that the property is eligible housing (see 24 CFR 983.53 and 24 CFR

983.54), complies with the cap on the number of project-based assisted units per building (24 CFR 983.56) and meets the site selection standards (24 CFR 983.57).

Developments of Proposal Category 1 (new construction) which propose units in census tracts with a poverty rate greater than 20% or with a minority concentration greater than 20% must demonstrate an overriding need for these affordable housing units in the proposed location. Submit under Tab 4(a) Property Description.

The units must be in the jurisdiction of the HACD which is DeKalb County but should not be in the “north west corridor” of the City of DeKalb.

The units must be ready for occupancy no later than sixty (60) days for existing units and one hundred and eighty (180) days for new construction, unless the HACD in its sole discretion grants an extension to the contract awardee.

D. Comparative Evaluation Criteria

The Evaluation Committee will evaluate each unit proposed using the process described above and the factors specified below. Each unit will be assigned a rating. Award of vouchers will not be made to any project/property/unit that fails to receive a minimum of 60 points in the Comparative Evaluation Criteria component of this RFP.

a. Property Rating (Up to 22 Points)

- Physical Suitability of Site for Proposed Development (Topography, Access, Freedom from Environmental Hazards) 6 Points
- Legal Suitability of Site for Proposed Development (Zoning, Utility existence, Site Control) 6 Points
- Neighborhood Suitability (proximity to workplace opportunities, public transportation, medical facilities, retail locations, schools, civic locations, recreational areas and facilities). NOTE: Proposed Developments in Census tracts with a poverty rate greater than 20%, with or a minority concentration greater than 20% are limited to 6 points for this element. 5 Points
- Properties located outside areas of poverty and/or minority concentration 5 Points

b. Development Rating (Up to 35 Points)

- Quality of Proposed Site Layout, including parking and Accessibility and Overall Development Plan 7 Points
- Development Amenities 7 Points
- Experience and Capability of Development Team 7 Points
- Financial Feasibility of Proposed Development 7 Points
- Demand for the Proposed Units 7 Points

c. Unit Rating (Up to 28 Points)

- Housing Quality of Proposed Units, their sizes and bedroom mix 7 Points
- Unit accessibility for individuals with mobility and visual impairments 7 Points
- Energy efficiency of the units and sustainable development features 7 Points
- Financial feasibility of proposed development 7 Points

d. Case Management Services (Up to 15 Points)

- Demonstrated Experience and Capability of Social Service Provider 15 Points

Note: In accordance with 24 CFR 983.103, after the Evaluation Committee determines that a proposal qualifies for project-based assistance, the HACD will inspect the unit(s) to ensure that it substantially complies with Housing Quality Standards. If it does not substantially comply with HQS, the unit will be deemed ineligible for project-based assistance.

E. Contract Award

The HACD reserves the right to award the contract(s) to the Offeror(s) whose proposal(s) is/are determined by HACD in its sole judgment to be the most advantageous proposal(s), taking into consideration the evaluation criteria. Should a selected finalist fail to enter into a HAP/AHAP with the HACD within sixty (60) days after award of the contract, the HACD reserves the right to award the contract to another/other Offeror(s). As an alternative, the HACD may choose to reissue the RFP if the rejection of all proposals is in the best interest of the HACD.



Federal Register

Thursday,
October 13, 2005

Part IV

Department of Housing and Urban Development

24 CFR Part 983

**Project-Based Voucher Program; Final
Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 983**

[Docket No. FR-4636-F-02]

RIN 2577-AC25

Project-Based Voucher Program

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

ACTION: Final rule.

SUMMARY: This rule replaces the current project-based certificate (PBC) regulations with a comprehensive new project-based voucher program. This rule is based on statutory authorities enacted in 1998 and 2000, and follows a proposed rule and public comment.

DATES: *Effective date:* November 14, 2005.

FOR FURTHER INFORMATION CONTACT:

David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708-2815 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The project-based voucher law was initially enacted in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See section 545 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105-276) approved October 21, 1998) (QHWRA) amending 42 U.S.C. 1437f(o).) Under QHWRA, a public housing agency (PHA), as defined under section 3(b)(6) of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(b)(6), has the option to use a portion of its available tenant-based voucher funds for project-based rental assistance. The project-based voucher law replaced an authority for project-based rental assistance in the former Section 8 certificate program.

In 2000, Congress substantially revised the project-based voucher law. (Section 8(o)(13) of the United States Housing Act of 1937, 42 U.S.C. 1437f(o)(13), as amended by section 232 of the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106-377, 114 S-tat. 1441, approved October 27, 2000)). The statutory basis for project-

based housing is codified at 42 U.S.C. 1437f(o)(13) under the heading, "PHA project-based assistance."

Significant changes made by QHWRA and the FY 2001 Appropriations Act include:

- A PHA may project-base up to 20 percent of the PHA's voucher funding.
- A PHA may provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing.
- Project-based assistance must be consistent with the "PHA Plan."
- Project-basing must be consistent with the statutory goals of "deconcentrating poverty and expanding housing and economic opportunities."
- After one year of assistance, a family may move from a project-based voucher unit. When a slot is available, the family may switch to the PHA's tenant-based voucher program or another comparable program.
- Except for units designated for families that are elderly, disabled, or receiving supportive services, no more than 25 percent of units in a building may have project-based voucher assistance.
- A PHA may enter into a housing assistance payments (HAP) contract for a term of up to 10 years. However, the PHA's contractual commitment is subject to availability of appropriated funds.
- At the end of the contract term, the PHA may extend the HAP contract with an owner for a period appropriate to achieve long-term affordability or to expand housing opportunities. Extensions are subject to availability of appropriated funds.
- Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) may not exceed the lower of the reasonable rent, or 110 percent of the applicable Fair Market Rent (FMR) (or any exception payment standard approved by the Secretary), or, if applicable, the tax credit rent. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.
- There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building located outside a "qualified census tract." These provisions are found at 42 U.S.C. 1437f(o)(13)(H).
- Admission to project-based units is subject to the overall voucher "income-targeting" requirement. Under 42 U.S.C. 1437f(o)(13)(J), the income targeting provisions of section 16(b) of the U.S. Housing Act of 1937 apply. Under these provisions, at least 75 percent of the

families admitted to the PHA tenant-based and project-based voucher programs each year must be families with annual incomes below 30 percent of median income for the area. HUD's regulations define such families as "extremely low-income families" at 24 CFR 5.603.

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

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

On January 16, 2001, (66 FR 3605), HUD published a **Federal Register** notice with guidance on the changes made to the project-based voucher (PBV) program in the FY 2001 Appropriations Act. By "project-based voucher program," this regulation means the program statutorily codified at 42 U.S.C. 1437f(o)(13), which allows PHAs to attach to dwelling units up to 20 percent of the funding available for tenant-based assistance. The HUD guidance notice described the law, identified statutory requirements that are effective immediately, and provided guidance on how to implement the law and existing program regulations.

II. The Proposed Rule

HUD published a proposed rule for comment on March 18, 2004 (69 FR 12950). A summary overview of the proposed rule can be found at 69 FR 12950-12953. The proposed rule text begins at 69 FR 12954. The comment period for this proposed rule closed on May 17, 2004. Forty-seven commenters submitted comments during the comment period on a wide variety of issues related to this proposed rule. The commenters included a variety of entities, including PHAs, professional and trade organizations, and individuals. In response to the comments, this final rule makes certain changes to the proposed rule as described in the following section of the preamble. In addition, a summary of the issues raised by the public commenters and HUD's responses is found at section IV of this preamble.

III. This Final Rule

This final rule implements the project-based voucher program. As of its effective date, this rule supersedes the January 2001 notice. The following

changes to the proposed rule are made by this final rule. Section IV of this preamble summarizes the public comments and HUD's responses to them.

Subpart A—General

1. Section 983.1

This final rule makes a technical correction in § 983.1(c), "Specific 24 CFR part 982 provisions that do not apply to PBV assistance." References to § 982.551–982.555 are removed. It is not necessary to mention these sections as excepted from the sections that do not apply, because the same result is obtained by simply not mentioning them.

2. Section 983.3

In the PBV definitions under § 983.3(b), the definition of "baseline units" is deleted. Instead, the rule uses the concept of "budget authority" to indicate the amount of appropriated funds available to a PHA for its housing choice voucher program.

The definition of "HUD" is removed because it is unnecessary to restate it in this part. "HUD" is defined in 24 CFR 5.100.

The definition of PHA-owned unit is revised to clarify that "PHA owned" includes any interest by the PHA in the building in which a unit is located. This change is necessary because HUD's experience to date has been that the definition has been misunderstood and applied differently in different geographical areas. Also, in the proposed rule, this definition cross-referenced a non-applicable portion of part 982.

The definition of "proposal selection date" is revised to reference the PHA's administrative plan. Section 983.51(b) of this rule requires that the PHA's procedures for selecting proposals be stated in the administrative plan.

The definition of "rent to owner" is amended. Examples of non-housing services that are not included in rent are added, and the adjective "reasonable" is removed. The rent reasonableness test is an overall limitation on the amount of rent to owner under the rule, and it is not necessary to include it in the definition.

A number of terms defined in the proposed rule are removed because those terms are defined in 24 CFR part 982 and are applicable to this rule under § 983.3(a)(2)(ii). These terms are: Fair market rent (FMR); family; gross rent; group home; HAP contract; owner; participant; reasonable rent; tenant; and tenant rent.

Definitions were removed and replaced with cross references for

"utility allowance" and "utility reimbursement." Both of these terms are defined at 24 CFR 5.603.

3. Section 983.5

The final rule makes two minor technical corrections. Section 983.5(a)(4) is amended to change "rental assistance payments" to "housing assistance payments." Section 983.5(b)(2) is amended to change "project-basing" to "project-based vouchers" (a similar change is made in § 983.6(c)).

4. Section 983.6

In paragraphs (a) and (c) of this section dealing with the amount of project-based assistance available to a PHA, the phrase "baseline units" is removed. Instead, the amount of project-based funding is expressed as a percentage of the amount of budget authority allocated to the PHA.

5. Section 983.7

The Notice of Proposed Rulemaking (NPRM) proposed that voucher program funds could not be used to pay for relocation costs under the Uniform Relocation Act in connection with assistance under this part. This final rule allows administrative fee reserves to be used for this purpose provided that payment of relocation benefits is consistent with state and local law and HUD regulations on the use of reserves, including 24 CFR 982.155, and that all other program administrative expenses have been satisfied.

6. Section 983.10

This final rule revises § 983.10(b) to clarify that PHAs may renew PBC HAP contracts for terms of up to five years, to an aggregate total including the original term and all extensions, of 15 years, depending on the availability of appropriated funds.

Subpart B—Selection of PBV Owner Proposals

7. Section 983.51

The final rule makes several editorial changes to this section. In addition, § 983.51(b)(2) is revised to allow PHAs to select owner proposals without a separate competition for projects that were competitively selected under another program within three years of the PBV proposal selection date. The prior competitive selection cannot have considered future PBV assistance, because such a consideration could give such projects an unfair advantage by wrongly affecting the original competition and thereby tainting the process. Also, the non-competitive selection of a project for low income

housing tax credits (LIHTCs) does not satisfy the requirement of a prior competition.

8. Section 983.52

This section adds additional detail to the general description of housing types to which assistance may be attached under this program. Existing housing is defined to exclude housing for which new construction or rehabilitation has been started. The rule cross-references subpart D as applicable to newly constructed and rehabilitated housing.

9. Section 983.53

This section makes an editorial change to combine § 983.53(a)(2) and (a)(4). Substantively, § 983.53(b) is revised to give PHAs the responsibility to make an initial determination (and HUD approves such determination as the statute requires) as to whether assistance may be attached to a high-rise elevator project that may be occupied by families with children because there is no practical alternative. PHAs may make this initial determination for its entire project-based program, a portion of it, or case-by-case, and HUD may approve the determination on the same basis.

10. 983.56

The NPRM proposed that the overall cap of 25 percent of the total number of dwelling units in the building include units receiving any type of federal, project-based assistance. This final rule limits the units that count against the cap to units receiving PBV assistance under this program, revising paragraph (a)(1) accordingly and removing paragraph (a)(2). Additionally, § 983.56(b)(2)(B) is revised. In the proposed rule, this exception to the 25 percent cap on project-basing units was limited to families in a housing voucher Family Self-Sufficiency (FSS) program under section 23 of the 1937 Act, 42 U.S.C. 1437u.

This final rule revises this exemption to include units that are made available to families that are receiving any type of supportive services that the PHA specifies as qualifying services in its PHA administrative plan. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the FSS contract of

participation or fails to complete another program of supportive services, such failure results in termination of assistance by the PHA, and is grounds for lease termination by the owner. The PHA is responsible for monitoring and ensuring compliance with this requirement. At the time of initial lease execution between the family and the owner, the family and the PHA sign a statement of family responsibility, and HUD will include this requirement in this statement, thus ensuring that the family is aware that the PHA will terminate assistance if the family fails to meet its obligation.

If the unit at the time of such termination is an excepted unit outside the 25 percent cap, the exception continues to apply to the unit as long as the unit is made available to another family receiving qualifying services. A family is deemed to be receiving supportive services if it has at least one family member receiving at least one qualifying service.

The section also is revised to clarify that, generally, a PHA may not require participation in medical or disability-related services. The one exception is that a PHA may require current drug and alcohol abusers to receive drug and alcohol treatment. This requirement is in accordance with HUD's overall policy to ensure that drug and alcohol abusers do not interfere with other residents' health, safety, or right to reasonable enjoyment of the premises of assisted housing. See, for example, 24 CFR 5.858 and 5.860.

11. Section 983.57

The NPRM proposed at § 983.57(b)(1) that a proposed site for project-based assistance be "consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities." This final rule revises proposed § 983.57(b)(1) and adds seven factors that the PHA must consider in determining whether a proposed PBV site is consistent with these goals. Under this final rule, the housing site must be consistent with the deconcentration goals stated in the PHA plan and with civil rights laws and regulations, including HUD's rules on accessibility at 24 CFR 8.4(b)(5). These include whether the site is in an Enterprise Zone, Economic Community, or Renewal Community (EZ/EC/RC); whether the concentration of assisted units will be or has decreased as a result of public housing demolition; whether the census tract is undergoing significant revitalization; whether government funding has been invested in the area; whether new market rate units are being developed in the area,

which are likely to positively impact the poverty rate in the area; if the poverty rate in the area is greater than 20 percent, whether in the past five years there has been an overall decline in the poverty rate; and whether there are meaningful opportunities for educational and economic advancement in the area. Housing under the PBV program may be selected only if consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

12. Section 983.58

Section 983.58(c) is revised to indicate that in the case of existing housing, the responsible entity must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5. The responsible entity must either complete the environmental review requirements of 24 CFR part 58, or HUD must perform the review under part 50, or the project must be determined to be exempt or categorically excluded. Section 983.58(d)(ii) of this final rule clarifies that in the case of review by the responsible entity under part 58, that entity makes the determination whether the project to be assisted is exempt or categorically excluded, and that if the project is exempt or categorically excluded, no further environmental review is needed.

Subpart C—Dwelling Units

There are no substantive changes to this subpart made in this final rule. There are some minor editorial changes.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

13. Section 983.155

The NPRM proposed that the PHA and HUD could set requirements for the evidence of completion of a housing project under this program at § 983.155(b), along with additional documentation that could be required under proposed § 983.155(b)(2). In the final rule, reference to HUD is removed so that the PHA alone sets these requirements.

Subpart E—Housing Assistance Payments Contract

14. Section 983.202

This final rule removes an unnecessary sentence from § 983.202(b)(2). This is an editorial change that does not alter the overall

intent of the section. The sentence stated that HUD provides funds to PHAs to make housing assistance payments to owners. This sentence is redundant as the same idea is stated in the first two sentences of the paragraph.

15. Section 983.203

This final rule conforms § 983.203(h) to the change to the exception to the 25 percent cap, making the exception generally applicable to families receiving supportive services, rather than only to families with a contract of participation under the statutory FSS program at 42 U.S.C. 1437u (see also § 983.57, redesignated from proposed § 983.56).

16. Section 983.205

The NPRM proposed that extensions of the HAP contract be in one-year increments. The final rule revises § 983.205(a) to allow for extensions of up to five years.

17. Section 983.206

In § 983.206(b), on "amendments to add contract units," this final rule removes "compliance with Davis-Bacon wage rates during construction" as an example of the legal requirements for a HAP amendment and replaces it with "rents are reasonable."

18. Section 983.209

This final rule adds "spouse" to the list of prohibited family relationships between the owner of a PBV unit and the resident(s) of this unit at § 983.209(e).

Subpart F—Occupancy

19. Section 983.251

This section relates to protection of in-place families; that is, families that are eligible to participate in the program as of the date the proposal is selected, and which reside in a unit that will be placed under a project-based assistance contract. This final rule finalizes similar protections for in-place families that were originally proposed, with the one difference that § 983.251(b)(2) is revised to require that such families be placed on the PHA's waiting list, with an absolute preference for referral to owners and placement in units that become available.

This final rule adds a new § 983.251(d), entitled "Preference for services offered," and redesignates proposed § 983.251(d) as § 983.251(e). This new section allows PHAs to grant a preference to families with disabilities that require the services offered at a particular project. The preference may be applied to those families, including individuals, whose disabilities

significantly interfere with their ability to obtain and maintain themselves in housing; who, without such services, will not in the future be able to maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents cannot be required to accept the particular services offered. The project may be advertised as being for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services offered.

Section 983.252, relating to information to be provided to families, is slightly revised for consistency and to make changes. Paragraph (c) is revised to include alternative formats for persons with disabilities. A new 24 CFR 983.252(d) is added regarding information for families with limited English proficiency.

Section 983.253 is revised in this final rule. Section 983.253(a)(2), stating that the owner "may apply its own admission standards," is replaced with a statement that, like current 24 CFR 983.203(c)(4)(i), the owner is responsible for having written tenant selection procedures. These procedures must be consistent with the purpose of improving housing opportunities for very low-income families and be reasonably related both to program eligibility requirements and to the applicant family's ability to perform its obligations under the lease.

20. Section 983.255

The NPRM proposed in § 983.255(a) that a PHA has no obligation but "may opt to screen applicants for family behavior and suitability for tenancy." This final rule specifies that a PHA may deny admission based on this screening. Proposed § 983.255(b)(2)(vi) gave the owner broad latitude to screen a family's background for a variety of factors, including "other factors determined by the owner." This paragraph is removed from the final rule. The owner may screen for factors "such as" the factors listed in § 983.255(b)(2)(i)-(v). A variety of minor revisions are made to proposed § 983.255 on information that a PHA must provide. These include the provision to the owner of any prior address of the applicant (rather than any immediately prior address) and information relating to drug trafficking by family members. This section also provides that the PHA may give the owner certain information about an applicant family, and that the PHA must disclose to the family a description of the PHA's policy regarding such

information. The requirement that this disclosure must be included specifically in the information package given to a family is removed, although the underlying requirement to give the disclosure to the family is retained.

21. Section 983.256

This final rule strengthens the PHA's ability to ensure that the lease meets the requirements of state and local law. Proposed § 983.256(b)(4) would have allowed the PHA to require revisions to the lease, if necessary. This final rule allows the PHA to decline to approve the tenancy if the lease does not meet the requirements of law.

This final rule adds an item to § 983.256(c), entitled "Required information." New § 983.256(c)(6) requires the lease to specify "the amount of any charges for food, furniture, or supportive services."

The final rule revises § 983.256(f). The NPRM had proposed that, under certain conditions, leases could be for a term of less than one year. This final rule eliminates that option.

22. Section 983.257

The final rule refines the section on owner termination of tenancy and eviction by specifying in a new § 983.257(b) that the owner shall not terminate a lease under the PBV program without good cause as meant in 24 CFR 982.310 (except for 24 CFR 982.310(d)(1)(iii) and (iv), and under the eviction provisions of 24 CFR 5.858-5.861). Otherwise, an owner may renew or non-renew a lease upon expiration, but if the owner does not renew without good cause, the family must be provided tenant-based assistance and the unit must be removed from the coverage of the HAP contract. A new § 983.257(c) is added to make the section consistent with § 983.56 and clarify that, if a family is living in a unit excepted from the 25 percent per-building cap on project-basing because of the family's participation in an FSS or other supportive services program, failure of the family without good cause to complete its FSS or supportive services program is grounds for lease termination by the owner.

23. Section 983.258

This section provides that the owner may collect a security deposit from the tenant, and that the deposit may be used when the tenant moves out to reimburse the owner for any unpaid rent, damages to the unit, or other money that the tenant owes to the owner. This final rule makes only minor editorial revisions.

24. Section 983.260

This final rule makes a minor technical change to this section to make the second sentence of paragraph (a) into a new stand-alone paragraph at § 983.260(d). This change is made because this sentence is actually a separate consideration from the remainder of paragraph (a). Paragraph (a) generally concerns termination of the lease at the family's option after one year of occupancy; the new § 983.260(d) concerns termination before one year of occupancy, which is treated differently.

25. Section 983.261

This section governs referrals to units that are excepted from the 25 percent cap on project basing. Under § 983.56(b), units in a multifamily building that are occupied by the elderly, families with disabilities, or families receiving supportive services are exempt from the overall 25 percent cap. This final rule revises § 983.261 in accordance with § 983.56 to expand the exemption from families with a contract of participation in the statutory FSS program under 42 U.S.C. 1437u to units made available to all families receiving supportive services as stated in § 983.57(b)(2)(ii). A family is "receiving supportive services" if it has at least one member receiving at least one such service. If a family successfully completes its supportive services program, the unit remains an excepted unit as long as the family resides in the unit. If a family fails to complete its FSS or other supportive services participation, or no longer has a member qualifying as elderly or disabled, the family must vacate the unit in a reasonable time established by the PHA and the PHA shall cease paying housing assistance on behalf of the non-qualifying family. In the case of a partially assisted building, the owner has the choice of substituting a different unit in accordance with 983.206(a) or terminating the lease. The assistance for a family that is not in compliance with its obligations, such as non-completion of its FSS program without good cause, shall be terminated by the PHA.

Subpart G—Rent to Owner

26. Section 983.301

The proposed rule would have provided for annual redeterminations of the rent to owner (at § 983.301(a)(3)), and for the amount of rent to owner (except for certain tax credit units) to be up to the lowest of the payment standard amount for the bedroom size minus any utility allowance, the reasonable rent, or the rent requested by the owner. This final rule significantly

revises these provisions in response to public comments, which are described below at section IV of this preamble. Under this final rule, the rent to owner is established at the beginning of the HAP contract term. The rent to owner, for non-LIHTC units, may not exceed the lowest of an amount determined by the PHA, not to exceed 110 percent of the applicable FMR or HUD-approved exception payment standard for the unit size less any utility allowance; the reasonable rent; or the rent requested by the owner. The tax credit rent is similar, except that the first of the three amounts is the tax credit rent minus any utility allowance. The tax-credit rent provision applies to certain tax credit projects not located in a qualified census tract. A "qualified census tract" is defined as any census tract or equivalent area defined by the Census Bureau in which: (1) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income; or (2) the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD. The rent must be redetermined at the owner's request or whenever there is a five percent or greater decrease in the published FMRs. The owner must request any rent increase at the annual anniversary of the HAP by written notice to the PHA.

Under final § 983.301(f), when determining the initial rent to the owner, the most recently published fair market rent (FMR) and utility allowance schedule applies, rather than, as proposed, the payment standard amount on the PHA's payment standard schedule.

27. Sections 983.302 and 983.303

These sections apply to redeterminations of the rent to owner. This final rule revises these sections so that, consistent with § 983.301, the time for redetermination is upon the owner's request and when there is a five percent or greater decrease in the published FMR.

28. Section 983.304

This section addresses limitations on the rent to owner for units that have subsidies under programs in addition to the PBV program. Proposed § 983.304(b)(2) would have provided that the rent to owner could not exceed the amounts allowed in these programs, enumerated under proposed § 983.304(b)(1). This final rule adds tax credit projects to this list. In addition, in order to provide paragraph designations for all sections, the proposed undesignated introductory section is redesignated § 983.304(a) in

this final rule, and the following sections are redesignated (b)-(f), accordingly.

Subpart H—Payment to Owner

29. Section 983.354

This section provides that meals and supportive services, generally, may not be charged as part of the rent to the owner, and that an owner may not use non-payment of such charges as grounds for termination of tenancy. The exception to this general rule is that in an assisted living development, owners may charge families or their members for meals or supportive services. In the case of such a development, the final rule adds a proviso that non-payment of such charges may be grounds for the owner to terminate the lease. The HAP payment may not be used for the costs of meals and supportive services.

IV. Responses to Public Comments

Comments Addressed to the Rule Generally

Comment: One commenter questioned why the provisions applicable to the project-based voucher program do not also apply to the former PBC program. Another commenter stated that HUD should combine the certificate and voucher programs and stop having multiple versions of one program in operation.

HUD Response: The Department is required by its regulations on rulemaking at 24 CFR 10.2 to publish regulations to implement, interpret, and prescribe law and policy for future effect. Thus, these regulations cannot be made retroactive to apply to the former program.

Comment: A commenter stated that PHAs are currently being funded from quarter to quarter based on actual utilization, and that, as a result, would likely have to hold or set aside some of their tenant-based funding in order to facilitate project-based voucher development proposals. "The proposed rule should more specifically address the allocation of funding for the PBV program as it relates to this issue."

HUD Response: HUD does not agree that this rule should address funding issues as it relates to the PBV program. In Calendar Year 2005, PHAs were provided with a specified amount of funding that was determined at the beginning of the calendar year and was not subject to quarterly or other utilization changes. PHAs are charged with managing their resources within program requirements to ensure that they do not incur costs beyond their annual funding allocation. If a PHA elects to project-base any of its voucher

units, it must manage its resources to ensure that the agreement to enter into a HAP contract agreement and HAP contract commitments will be honored.

Comment: One commenter stated that PHAs should be able to give preferences to "CHDOs, HOME, HOPE VI, LIHTC properties" and similar projects, and to housing providers with a history of "responsible practices and proper reporting."

HUD Response: CHDOs most likely refers to community housing development organizations that are eligible to participate in certain HUD Community Development Block Grant programs. The requirements for CHDOs are stated at 570.204(c). HOME probably refers to the HOME Investment Partnerships Act, 42 U.S.C. 12701 note. HOPE VI is the popular name for the program for revitalization of public housing now codified at 42 U.S.C. 1437v.

The final rule provides that in cases where a federal, state, or local housing assistance, community development, or supportive services program that requires a competitive selection of proposals has already competitively selected proposals, a second competition for PBV is not required. The original competition, however, cannot have considered the possibility of future PBV assistance, but the selection must have been based on the project's merits at the time of the competition. However, the PHA, if it is in accordance with its administrative plan, can give a preference to CHDOs, HOME, and LIHTC projects.

Comment: A commenter stated "we remain concerned about the need for HUD's continued involvement in a given PHA's administration of the PBV program." This commenter stated that PHAs are independent governmental agencies and can police themselves with respect to the proper and needed use of public funds. This commenter cited proposed § 983.51 (referenced by the commenter as "dealing with PHA-owned units") and § 983.55 (subsidy layering) as particular concerns. Because many PHAs are heavily involved in real estate development and subsidy layering reviews—"perhaps even better than a HUD staff person who is not intimate with the local real estate development market"—PHAs should be allowed to make determinations in both those areas.

HUD Response: Congress specifically set in place safeguards against possible program abuse regarding PHA-owned units by requiring HUD to ensure that Housing Quality Standards (HQS) inspections and rent determinations are conducted by outside entities. To

protect against possible PHA bias or abuse, and to ensure fairness, HUD has promulgated program regulations to carry out Congress' intent. The Office of Public and Indian Housing will be issuing a separate regulation to delegate subsidy layering reviews (see response to comments on § 983.55).

Comment: Five commenters commented on the relationship between 24 CFR part 982 and part 983. Four commenters stated that HUD should add a general provision that in the event of a conflict between parts 982 and 983, part 983 shall prevail over any inconsistent provisions of part 982 with respect to the PBV program. Another commenter stated that in the event that HUD has missed something in part 982 that is not applicable to the PBV program, there should be leeway for HUD to determine, short of a regulatory waiver, that the provision is inapplicable to the PBV program.

HUD Response: 24 CFR 982 is the regulation for the tenant-based voucher program. The rule identifies the provisions in 24 CFR 982 that do not apply to PBV assistance under part 983. HUD believes it has accurately cross-referenced part 982 in the 983 regulation, but if HUD determines that any errors have been made, HUD will publish corrections in the **Federal Register**.

Comment: A commenter stated that there is a disincentive to participation in the PBV program because PHAs want to designate a portion of their Section 8 allocation to leverage investment or LIHTCs. However, while these units are undergoing construction or substantial rehabilitation, they are counted adversely in the PHA's lease-up rate calculation. This commenter recommends a grace period for such PHAs during construction or substantial rehabilitation. This grace period should be provided as long as there is a well-defined construction plan in place with specific time frames that are documented and submitted to HUD.

HUD Response: During construction or substantial rehabilitation, units that will have PBV assistance attached pursuant to an agreement do not require the setting aside of vouchers and budget authority committed for those units. Rather such set asides are required only after completion of the project.

However, the PHA must ensure that budget authority is available for those units upon execution of the HAP contract. If a PHA is leased up to its budget authority, it must ensure that through the turnover of vouchers it will have the necessary units and dollars to meet its contractual commitments when the project is ready to be occupied.

PHAs are responsible for monitoring their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than is available.

Comment: A commenter also stated that "Agencies should be able to lease the necessary number of vouchers through monthly turnover by the time they are needed for occupancy under the PBV program. To allow for this, HUD should not consider budget authority committed to PBV assistance for this reason to be unutilized." This change should also be reflected in HUD's Section Eight management assessment (SEMAP). HUD should change its procedures for determining agencies' lease-up rates and corresponding budget authority. Similarly, another commenter stated that, should a PHA set aside vouchers to project-base, the vouchers set-aside should not count against SEMAP or any other indicator. PHAs should be able to set-aside vouchers based on projections of the expected availability of vouchers due to turnover, attrition, or expected allocation of additional vouchers.

HUD Response: See response to comment above.

Comment: One commenter stated that HUD should increase the total number of vouchers available. "This is the best and most successful housing subsidy program in the country."

HUD Response: The appropriations for the voucher program, as well as the percentage of voucher funding that may be project-based, are both set by Congress.

Comment: A commenter stated that "The rule proposed is still inconsistent with the congressional intent to simplify the process for project-basing vouchers * * *. Regrettably, the proposed rule continues to make the program too cumbersome to be appealing to many housing agencies."

HUD Response: HUD disagrees that the proposed rule makes the program too cumbersome. The proposed rule has simplified and deregulated many aspects of the PBV program, such as competition and HQS inspections. The rule also eliminates any HUD approval actions during the development process resulting in a decrease in the necessity for HUD-approved exceptions and regulatory waivers. The final rule also simplifies the selection of proposals even further than originally proposed.

Comment: A commenter stated generally that transitional housing is important because it assists the homeless with skills necessary to become good tenants to whom landlords would be willing to rent. Accordingly, the PBV rule should be modified so that it will work with transitional housing

servicing homeless persons and persons with special needs.

HUD Response: The final rule provides that transitional housing is ineligible housing under the project-based voucher program. The statute governing the project-based voucher program specifically provides that low-income families assisted under the program may move after the family has occupied a unit for 12 months. If a transitional housing agreement requires a family to move prior to 12 months, the law governing the project-based voucher program does not give families the right to a tenant-based voucher prior to 12 months. Thus, in the situation described, a family would not be entitled to tenant-based assistance under the law governing the project-based voucher program.

Also, if a transitional housing agreement requires a family to move some time after the initial 12 months, a PHA would be required under the law to provide such a family with tenant-based assistance. If the project-based voucher contract with the owner extends beyond the transitional housing agreement, the PHA would also be required to refill the units vacated by the previous transitional housing participant. Given the scarcity of funding, such a result is undesirable. Additionally, if a family must leave after the initial 12-month lease in accordance with the transitional housing requirements, the PHA may not have a voucher or other form of assistance readily available. Since the participant would be required to move, the participant would have to do so without the benefit of subsidy since the PBV law only requires PHAs, after the initial 12 months, to issue a voucher or other form of assistance if available. The Department believes that transitional housing is inconsistent with the project-based voucher program. Thus, the final rule makes transitional housing an ineligible housing type under the project-based voucher program.

Subpart A (Proposed §§ 983.1–983.10)

Comment: In reference to proposed 24 CFR 983.2(c)(6)(iv), one commenter stated that the proposed rule incorrectly identifies 24 CFR §§ 982.551–555 as being under part 982, subpart K. These sections are codified under subpart L.

HUD Response: HUD agrees and this final rule includes this technical correction.

Comment: A number of commenters questioned the definition of "existing housing" in § 983.3, seeking specificity about dollar amounts of repair that would distinguish substantial rehabilitation from existing housing.

Five commenters suggested that there be a "safe harbor" dollar amount of repairs that constitute existing housing. One of these commenters asked, if existing housing requires less than \$1,000 of rehabilitation, and "rehabilitation" is any unit that requires \$3,000 or more, how are units requiring \$1,000–\$3,000 worth of work categorized?

HUD Response: In this final rule, HUD has retained the language contained in the proposed rule. HUD has decided not to accept the suggestion of specifying a dollar amount since costs attributable to repairs and rehabilitation are market-driven and may vary widely depending upon individual market areas. Such decisions are properly left up to the PHAs.

Comment: Commenters objected to the definition of "comparable rental assistance" in proposed § 983.3, stating that the definition should define comparable rental assistance as gross rent that costs the family no more than 30 percent of their adjusted income, rather than 40 percent. One of these commenters stated that setting the standard at 40 percent violates the statute, and argued that the standard should be 30 percent, subject to a limited exception if the gross rent is greater than the PHA's payment standard.

HUD Response: The final rule defines comparable rental assistance as "a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that requires the tenant to pay no more than 40 percent of its adjusted monthly gross income for rent." Section 8(o)(3) of the United States Housing Act of 1937 governing the voucher program provides that at any time a family initially receives voucher assistance, the family rent contribution is limited to 40 percent of adjusted income. The definition of comparable rental assistance contained within the final rule does not violate the statute.

Comment: A commenter stated that the lobbying restriction in proposed § 983.4 is obsolete.

HUD Response: HUD reviewed the lobbying restrictions in § 983.4 and determined that they are not obsolete and therefore continue to apply to the project-based voucher program.

Comment: A commenter stated that § 983.5, which describes the project-based program, should specify when PBVs count toward the PHA's utilization rate. This commenter states that "the Agreement to enter into a Housing Assistance Payment (HAP) contract is the appropriate trigger for SEMAP purposes."

HUD Response: HUD has considered this comment. Currently SEMAP does not exclude units under an Agreement from total units for SEMAP scoring purposes under the leasing indicator. Since units and dollars that are committed under an agreement do not have to be set aside during the development or rehabilitation phase of a project, these units will not be excluded from the SEMAP leasing indicator. PHAs must monitor their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than available. If a PHA is fully leased, it may have to withhold issuance of vouchers for a number of months based on attrition rates to ensure that units and dollars will be available at the time the HAP contract is executed.

Comment: A commenter stated that § 983.5(b), which references Section 8 administrative fees, should be revised. This commenter stated that PHAs that own PBV developments are restricted to a significantly lower administrative fee than private owners. However, PHAs must also contract for services at increasing administrative costs. This creates a disincentive to participation. Therefore, PHAs should be entitled to the same administrative fee as private owners.

HUD Response: HUD has considered this comment, but is not adopting it for the following reasons. The United States Housing Act of 1937 requires that a unit of state or local government or another entity approved by HUD perform certain functions for PHA-owned units. The act also authorizes HUD to decrease the administrative fees for PHA-owned units. In the case of PHA-owned units, some activities for which an owner is compensated from rental income under other HUD project-based programs result in a reduced administrative fee. For example, income-certification and re-examination are tasks for which PHAs are reimbursed as an owner through rental income under the PBV program.

Comment: Two commenters expressed concerns about the 20 percent cap on project basing. One of these commenters stated that the cap is too high and would force consumers "to use their vouchers in projects, at least for a period of time," and will not have the option of using them with private landlords. The commenter stated that this does nothing to increase the amount of affordable, accessible housing and that the proposed regulation promotes segregation, loss of affordable units, and subjects tenants to impossible compliance regulations like workfare. This commenter recommends full

funding of the Section 8 program in its present form, as well as additional changes in regulations to allow those with very low incomes to qualify for housing under LIHTC programs, such as the 80/20 program, HPD programs, and the Mitchell-Llama programs.

Another of these commenters stated that the 20 percent cap is a "significant restriction" on a PHA's ability to project-base vouchers and that HUD should pursue statutory changes to make the same flexibility that exists in the Moving to Work (MTW) program available to all PHAs.

HUD Response: The commenter refers to various assisted housing programs. The 80/20 program is a form of bond-financed tax credit that derives its name from the requirement that no more than 80 percent of the units in a LIHTC project financed with tax-exempt private activity bonds are to be occupied by individuals or families at market-rate rents, while the other 20 percent must be rented to low-income (no more than 50 percent of median) households. HPD is the New York City Department of Housing Preservation and Development. Mitchell-Lama is a New York State program of moderate- and middle-income rental and limited-equity cooperative developments. MTW is a HUD demonstration program codified under 42 U.S.C. 1437 note, which allows PHAs to design and test ways to promote self-sufficiency among assisted families, achieve programmatic efficiency and reduce costs, and increase housing choice for low-income households.

HUD must work under the current statutory framework that restricts project-based assistance to 20 percent of a PHA's budget authority under the voucher program.

Comment: Four commenters stated that proposed § 983.7(a)(2), which provides that relocation costs may not be paid out of voucher program funds, should not prohibit PHAs from using funds in the Section 8 administrative fee reserve account to pay relocation costs.

HUD Response: HUD has considered this comment and decided to adopt it. Provided payment of relocation benefits is consistent with state and local law, and provided the use of the administrative fee reserve is consistent with 24 CFR 982.155, PHAs may use their administrative fee reserves to pay for relocation assistance after all other program administrative expenses are satisfied. Program participants should also be mindful that HUD and Congress have from time to time restricted the use of administrative fee reserves.

Comment: Proposed §§ 983.9 and 983.53(a) prohibit voucher funding to be

used with cooperative housing and shared housing. Two commenters stated that they object to this exclusion of cooperative housing. These commenters stated that this "is an arbitrary exclusion, not required by statute, and represents a change from the Initial Guidance." These commenters also state that the exclusion is against HUD's "regulations and policies for other project-based Section 8 programs, as well as tenant-based Section 8," and that there are numerous examples of cooperative projects that have been good housing providers: One of these commenters stated that "denying project-based Section 8 to * * * co-ops would make the projects unfeasible and be unfair to the low-income seniors who benefit from the creation of this affordable housing." This commenter also states that cooperatives have been proven to have lower operating costs than comparable rentals, and, therefore, it is in the government and public interest to encourage Section 8 in cooperatives.

Another commenter similarly objected to the exclusion of shared housing. The commenter stated that "[shared housing] can be an extremely effective supportive transitional housing model that is being extensively used around the country."

HUD Response: HUD considered these comments, but did not adopt them for the following reasons. Cooperative housing is not a permitted housing type under the project-based voucher program. Cooperative housing is considered homeownership and Section 8(y) of the United States Housing Act, which governs homeownership under the voucher program, limits the form of subsidy PHAs may use to provide homeownership assistance to tenant-based assistance. The comment regarding shared housing is also rejected since there are provisions to allow the use of group homes and congregate housing that are similar to shared housing. Additionally, to permit shared housing under the PBV program would require PHAs to refer families to an owner to occupy a unit with families that are not acquainted with each other, which may not be a desirable housing situation. This would result in many families refusing to share housing and as a result have families living in oversized units in violation of program guidelines.

Subpart B (Proposed §§ 983.51–983.59)

Comment: A number of commenters submitted comments regarding proposed § 983.51, which requires competitive selection of proposals for project-basing with an exception for

proposals already selected pursuant to a competitive government housing assistance, supportive services, or community development program.

More than ten commenters supported the exception to competitive selection for units that have been previously competed. Four commenters stated that this proposal would save time and money and avoid needless duplication.

Some commenters opposed requiring any competition. One commenter stated that the competitive selection procedure, including the requirement for prior competitive selection, is too rigid. This commenter stated that these Reform Act requirements do not apply to PHAs. Since there is no statutory requirement for a competitive process, PHAs should be given discretion in how they award vouchers. Another commenter stated that selection should be allowed based on a request from a developer or owner; based on a HOPE VI site or similar endeavor having PHA participation; or public notice inviting competitive proposals. Another commenter stated that proposals subject to previous competitive selection should be exempt from additional environmental, site selection, and subsidy layering reviews; however, the rule should allow PHAs to use PBVs without any competition because "agencies that need to lay out annual budgets and support their annual program operations would be placed in a compromising position. Agencies could thus face financial disincentives and opt out of using this important program." Another commenter stated that there should be no competition, but PHAs should develop and provide a clear set of guidelines to applicants. This commenter stated that the statute does not require competitive selection, but does require that HAP contracts be consistent with the agency's plan. This commenter stated that competitive selection is neither practical nor necessary, given the limited number of vouchers that will be available. Most affordable housing developments have funding from a variety of sources, and adding yet another competitive funding cycle complicates the process of financing affordable housing units, and adds unnecessary time and costs.

Some commenters criticized specific aspects of the competition provisions. Two commenters, while agreeing generally with the proposal on competitive selection, stated that the rule should make clear whether the PHA must include in its administrative plan its intent to make PBVs available based on a prior competition. Another commenter supported the prior competition exemption and also stated

that the rule should give PHAs some discretion in establishing the competitive criteria whereby they will select units for project basing. A commenter stated that a news release and web publication should be sufficient to satisfy the advertising requirement in proposed § 983.51(c). A commenter, while agreeing with competitive selection generally, stated that the prior competition exception would appear to allow subsidy layering.

HUD Response: No response is necessary to the supportive comments. As to other comments, HUD believes that many commenters misunderstand the nature of the competitive selection of proposals. The purpose of the notice is to provide interested parties a fair opportunity to participate in the program. The final rule clarifies that PHAs must publish a general notice in accordance with 983.51(c) to inform the public that the PHA is soliciting proposals for the PBV program. The notice must indicate that the PHA's selection policy is available for viewing at the PHA's office. In addition, the PHA's selection criteria must be stated in the PHA's administrative plan. HUD will clarify that PHAs may target particular units in desirable neighborhoods or key "turning point" buildings in established revitalizing areas. One commenter suggested allowing PHAs to substitute environmental, site selection, and subsidy layering reviews conducted under previous competitions for the project-based voucher program. In response to the suggestion, HUD believes it would be impractical and infeasible for HUD to monitor requirements under individual state and local programs to assure consistency with federal statutory and regulatory requirements. HUD, therefore, is not adopting that comment. Site and neighborhood, site selection standards, environmental reviews, and subsidy layering requirements continue to apply.

Comment: Proposed § 983.51(e) prohibits PHAs from using PBV assistance with public housing units. A number of commenters suggested that this language was overbroad and should be clarified. Two commenters stated that the language "could be read too broadly to include non-public housing units in a HOPE VI or public housing mixed finance project that contains both public housing units and non-public housing units." Three commenters stated that the definition of "public housing" in the U.S. Housing Act includes units receiving both capital and operating assistance. Therefore, under this rule, PHAs could not use

PBVs in HOPE VI developments. The commenters object to this result. One commenter stated that using PBV assistance in conjunction with HOPE VI and replacement housing factor (RHF) funds is especially important in areas where there has been a significant amount of public housing demolition. Therefore, more replacement housing could be produced. In many markets, PBVs alone do not provide enough of an incentive to develop affordable housing. This commenter and another commenter stated that pairing PBV with capital funds would provide enough operating and capital subsidy to develop long-term affordable housing, and suggests that the first sentence of proposed § 983.51(e) be revised to read: "Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds." Another commenter agreed and stated that "Congress made substantial changes to the PBV program in Section 232 of the 2001 HUD Appropriations Act, with the intent of making the program more flexible and workable. One of the important changes Congress made was to repeal a former statutory prohibition of project-based assistance for units to be constructed or rehabilitated with funds under the United States Housing Act of 1937." Proposed § 983.51(e) could be read to reinstate the bar on providing PBV assistance for units to be constructed or rehabilitated with U.S. Housing Act funds notwithstanding Congress' repeal of that bar.

HUD Response: The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-rata must occur. For example, if a project receives \$2,000 in non-public housing HOPE VI funds and \$1,000 in

Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program.

Comment: Proposed § 983.53 provides that certain types of housing are ineligible for PBV assistance. A number of commenters commented on this section. One commenter stated that there may be situations where location of a facility, especially supportive housing, on the grounds of a medical or mental institution is appropriate (see proposed § 983.53(a)(2)). If the intent of the rule is to prevent subsidizing of hospital rooms, that can be accomplished another way.

HUD Response: HUD has considered this comment and is not adopting it for the following reasons. To allow project-based assistance units on the grounds of medical or mental institutions would be inappropriate since the residency requirements for such housing facilities are usually limited to patients of the medical or mental institution. Housing for medical and mental institutions is generally funded privately or by local or state governments. The PBV program is not intended to be used to substitute for financing of housing that already exists for individuals who are residents of mental or medical facilities with federal funds appropriated to assist low-income families.

Comment: Five commenters stated that the PHA, not HUD, should determine when there is no practical alternative for a high-rise elevator project that may be occupied by families with children (see proposed § 983.53(b)). This could be particularly important where a PHA has a better understanding of the preservation needs of the community. Another commenter stated that the term "high-rise" should be defined because even two, three, or four story buildings that provide excellent family housing may have elevators. Another commenter stated that some existing high-rise developments provide good housing and should be preserved. The limitation on high-rise buildings with elevators should apply only to new construction. Another commenter stated that in Baltimore, high-rise buildings with elevators may be a significant source of housing. "We believe that that high-rise elevator buildings with one and two bedroom apartments * * * should be eligible."

HUD Response: While the statute gives the authority to make the

determination about high-rise elevator projects to the Secretary, HUD is also mindful of the commenters' concerns. Therefore, this final rule revises the rule so that PHAs may make an initial determination, but HUD must approve a PHA's finding that there is no practical alternative.

Comment: Proposed § 983.58(c)(2) makes the release of PBV funds contingent on an environmental review being performed. A number of commenters stated that it is unclear what "release of funds" means because the funds will have already been allocated to the PHA.

HUD Response: Under part 58, HUD may allocate funds to the PHA, but the PHA may not commit or expend these funds until an environmental finding is completed by the responsible entity (RE). If the finding is that of an exempt activity (§ 58.34) or a finding of activity that is categorically excluded and not subject to § 58.5, then the PHA does not have to submit a request for release of funds (RROF) and certification, and no further approval from HUD is needed by the PHA for the draw down of funds to carry out exempt activities and projects. However, the RE must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption.

In those cases where the RE determines that an environmental review is required, the RE will perform such review and execute the certification portion of the RROF by completing only Parts 1 and 2 of HUD form 7015.15 and by forwarding the form to the PHA, which must complete Part 3 before providing the form to HUD for approval. The PHA must await HUD approval from the Field Office Public Housing Director as the HUD Authorizing Officer; the approval is obtained either on HUD form 7015.16—Authority to Use Grant Funds or by a letter dispatched to the PHA. Once received, the PHA may then draw down funds under the voucher annual contributions contract for the project-based voucher project.

Comment: One commenter commented on proposed § 983.53(d), which prohibits PHAs from attaching PBV assistance to units occupied by ineligible families. This commenter stated that the PHA should be given the flexibility, between the time the Agreement and HAP contract are executed, to move the family to another unit and free the unit for an eligible family.

HUD Response: It is HUD's policy to minimize displacement and what the commenter proposes is unnecessary.

Section 983.206 allows PHAs to add units to the HAP contract when an ineligible family moves out.

Comment: Proposed § 983.54 prohibits PBV assistance from being attached to units that have other forms of Section 8 and other types of federal assistance. Two commenters stated that the rule should make clear that in mixed-finance projects, this prohibition applies only to the same units that are receiving subsidies.

HUD Response: This final rule clarifies that the use of PBV assistance in mixed-finance projects that are not classified as ineligible housing is authorized. Section 983.54 discusses prohibited types of housing under the project-based voucher program. Since the type of units the commenter mentions is not listed, the unit type is not an ineligible housing type.

Comment: Two commenters stated that § 983.54(a), for clarification, should add the word "unit" after "public housing."

HUD Response: The comment is accepted. The final rule is revised to include this clarification and also to specify that the unit is a "dwelling unit."

Comment: A commenter stated that an exception to the general rule should be made for holders of enhanced vouchers who received those vouchers when a mortgage on an older, assisted 236 project, which may have had a high tenant rent contribution, was prepaid. PHAs should have the flexibility to replace these enhanced vouchers with PBVs to reduce these tenants' rent contribution to 30 percent of adjusted income.

HUD Response: The comment relates to an issue that is beyond the scope of this rule. Section 8(t) of the United States Housing Act of 1937 explicitly limits enhanced voucher assistance to tenant-based assistance under section 8(o) of the Act.

Comment: One commenter stated that proposed § 983.54(a), barring a PHA from attaching project-based assistance to "public housing units," is a carry-over of current § 983.7(c)(1) that predates the QHWRRA. In QHWRRA, Congress authorized PHAs to provide capital funds only and changed the definition of public housing to include units in a mixed-finance project that receive capital or operating assistance. Section 983.7(c)(1) was intended to bar project-based assistance from being attached to units that were receiving operating assistance. It was not intended to bar using project-based assistance with units that were constructed or rehabilitated with capital funds under the 1937 Act. HUD should clarify that

§ 983.54(a) and the last sentence of § 983.54(e) apply only to public housing units receiving operating subsidies under section 9(e) of the 1937 Act, 42 U.S.C. 1437(g)(e). Two other commenters agreed, stating that the rule should clarify that project-based assistance can be used with HOPE VI or capital funds.

HUD Response: HUD has considered these comments with the result that this final rule retains the proposed rule language, but clarifies when project-based voucher assistance may be combined with HOPE VI funds. The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that the public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is impermissible to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine PBV and HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-ratio must occur. For example, if a project receives \$2,000 in HOPE VI funds and \$1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any public housing funds, the units may be assisted under the PBV program.

Comment: One commenter asked that HUD not make projects that receive "operating support" ineligible for PBV. "Sometimes projects need additional operating cash flows due to unexpected increases in operating costs and expenses." Another commenter stated that, as part of a plan to end long-term homelessness, "we urge that the rule be amended to permit replacement of temporary subsidy with PBVs, or to clarify that such replacement is permissible." This commenter also stated that there may be situations, especially in supportive housing, where operating cost subsidy is required, despite rent subsidy, to ensure affordable rents and achieve project rent

payment standards. This commenter suggested that HUD delete § 983.54(d) or revise it to permit operating subsidy where other governmental operating cost subsidy is required and demonstrated through the subsidy layering review to be necessary to the project. This commenter recommended that a new § 983.54(m) be added to read:

"For purposes of paragraphs (c), (d), and (l), rental or operating costs subsidies intended to terminate upon implementation of a HAP contract shall not be considered "governmental rent subsidy," "governmental subsidy," or "housing subsidy."

HUD Response: HUD considered these comments, but did not adopt them. With respect to the public housing program, it is statutorily impermissible to combine Public Housing Operating funds with PBV funds. Supportive housing programs that receive operating funds are also ineligible under the PBV program since rent is generally included as an operating expense.

Comment: A number of commenters objected to § 983.55, which requires a subsidy layering review to be conducted by HUD or an approved entity before a PHA may enter into a HAP contract. Commenters objected both to the overall requirement of a subsidy layering review and to the conduct of the review by HUD.

One commenter stated that subsidy layering should not be required as rent caps and other guidance should suffice. If subsidy layering is to be required, the rule should be amended to allow the PHA to conduct the review and receive just compensation. One commenter stated that there should be an exception for projects that provide extensive support services, such as projects that serve the homeless. Another commenter stated that if the PHA determines that there is no other government subsidy involved, no subsidy layering review should be required. Another commenter stated that the rule should permit additional governmental subsidy when necessary for the success of the project. One commenter questioned whether subsidy layering analysis applies to every application that shows public capital investments in the form of loans or grants, and stated that such an analysis should not be required where the bulk of public financing is through loans and there is no tax-credit financing.

HUD Response: Because prevention of excessive subsidy is statutorily required, this final rule retains the requirement for subsidy layering reviews.

Comment: One commenter stated that HUD should not be involved in subsidy

layering reviews. Other commenters stated that section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) requires that, where low-income housing tax credits are involved, the state tax credit allocating agency must do the review. Still another commenter stated that while use of PBV must be consistent with subsidy layering, the rule "could be misconstrued to create additional bureaucratic barriers" and that the rule should clarify that it does not supersede authority of Housing Credit Agencies (HCAs) and Housing Finance Agencies (HFAs) to conduct the review when they are involved because of tax credits. When there is such an agency already involved, HUD should not have to determine individually whether it is an appropriate independent agency to do the review. Two commenters stated that a subsidy layering review for this program should not be required when another office or agency is authorized to perform a subsidy layering review or has recently performed such a review in connection with other assistance. One commenter stated that the rule should clarify what are approved entities and what entities may conduct a layering review. This should include entities already approved or required to perform such reviews in HUD programs.

HUD Response: The issue of entities that can perform subsidy layering reviews is addressed in statute and guidance published as **Federal Register** notices, and, hence, is not appropriate for treatment in this rule. Pursuant to Section 911 of the Housing and Community Development Act of 1992, as amended, 42 U.S.C. 3545 note, HUD has issued guidelines in the form of **Federal Register** notices on February 25, 1994 (59 FR 9332), and December 15, 1994 (59 FR 64748). Under these notices, the Office of Public and Indian Housing performs subsidy layering reviews for programs under its jurisdiction with input from field offices. HUD may invite HCAs to perform subsidy layering reviews in connection with projects receiving low-income housing tax credits, by publishing a **Federal Register** notice along with the guidelines that HCAs must follow in conducting subsidy layering reviews. PIH may publish revised guidelines as a **Federal Register** notice in the near future.

Comment: A number of commenters commented on the Family Self-Sufficiency (FSS) program exemption to the 25 percent cap on project-basing, with most commenters stating that the exemption is too narrowly limited to statutory FSS programs under section 23 of the 1937 Act, 42 U.S.C. 1437u. Many

commenters expressed the view that there should be a broader definition of services that qualify for the exemption to the cap. Commenters stated that "other tools are available than FSS, such as local self-sufficiency programs * * *," and that a broader definition of qualifying services is a better alternative than the FSS program alone. Some of these commenters cited specific local programs as ones that should qualify for the exemption to the cap. Along these lines, three commenters suggested that the term "families receiving supportive services" be defined as "families receiving services essential for maintaining or achieving independent living, such as, but not limited to, counseling, education, job training, health care, mental health services, alcohol or other substance abuse services, child care services, or service coordination and case management services." One commenter stated, in addition, that HUD should remove § 983.56(b)(2)(ii) and replace it with the phrase "Families receiving supportive services." Another commenter stated that the limitation of supportive services to the FSS program is arbitrary and impractical. First, families in self-sufficiency programs other than FSS in many cases receive services that are as comprehensive or more comprehensive than FSS. Second, funding for FSS coordinators has been shrinking in real terms in recent years. One commenter stated that "* * * service programs run by many of the faith-based organizations we are partnering with would not qualify for this exception." Two commenters stated that it is inconsistent with statute to limit "families receiving supportive services" to "FSS families," because the statute refers to the broader concept of "supportive services."

HUD Response: HUD has considered these comments and adopted the suggestion to allow for services other than those services associated with the statutory FSS program under 42 U.S.C. 1437u. Under the Final Rule, PHAs are authorized to establish the type of services and the extent to which services will be provided to allow exceptions to the 25 percent limit. PHAs must state in their administrative plans what these services are. The final rule also clarifies that PHAs are responsible for determining that units are made available to families that are receiving the services in order for the unit to be and to remain excepted from the cap (see § 983.56(b)(2)(ii)(C)) and ensuring that assistance is terminated if families living in exempted units fail without good cause to complete their FSS or supportive services obligation.

Comment: One commenter stated that the narrow definition of social services that qualify for the exception to the cap "will exclude many chronically homeless individuals and families—who may neither participate in the FSS program nor qualify as 'disabled' under the Section 8 statute due to a primary diagnosis of alcoholism or substance abuse. Such a result would be clearly contrary to the Administration's commitment to prioritize this vulnerable population within all HUD programs."

HUD Response: See response above.

Comment: Two commenters stated that HUD should provide more flexibility with respect to the FSS exception to the 25 percent cap on project basing and make clear that the PHA can make its own determination what constitutes adequate supportive services.

HUD Response: See response above.

Comment: Two commenters stated that the proposed rule improperly imposes a work requirement by allowing PHAs to terminate assistance to a family not in compliance with its FSS contract of participation. "The statute is silent about any such condition of continued occupancy."

HUD Response: Since the family is receiving PBV assistance for a unit outside the statutory 25 percent cap because of its participation in supportive services, the family necessarily loses that right if it fails with respect to its FSS contract or its supportive services program. Therefore, this final rule provides that assistance to such a family can be terminated. However, as long as the unit continues to be made available to qualifying families, the unit can continue to receive assistance and benefit another family participating in supportive services.

Comment: A number of commenters stated that other forms of project-based subsidy should not count toward the 25 percent limit, because the statute applies only the 25 percent limit to project-based vouchers. Other commenters stated that this limitation would impede the preservation of affordable housing and constrain the development of supportive housing units. Two commenters stated that if HUD continues to include "other federal project-based assistance" as counting against the 25 percent cap on assisted units, the rule should make it clear that the term does not include units receiving only mortgage or production subsidies (such as § 236, § 221(d)(3), LIHTCs, or HOME funds).

HUD Response: HUD has considered these comments and adopts them in this

final rule. This final rule limits the number of project-based units in a building to 25 percent of the total units in the building and not to 25 percent of the unassisted units.

Comment: One commenter stated that limiting the size of a multifamily building to no more than a specified number of units is another alternative to the 25 percent cap.

HUD Response: The 25 percent cap is provided for by a clear and unambiguous statute, 42 U.S.C. 1437f(o)(13)(D)(i), and cannot be changed by this rule.

Comment: Two commenters stated that they support the exception to the 25 percent per building cap on project-based units for elderly and disabled families. One commenter stated that "we would encourage HUD to also provide an exception to developments for units that provide families with service-enhanced housing which includes families who were previously homeless." Another commenter similarly stated that "We suggest including in the list of examples of "excepted units" housing developments created through HUD's initiatives to provide permanent supportive housing to address the needs of chronically homeless individuals."

HUD Response: HUD has considered these comments, but has not adopted them. The statute explicitly provides for certain exceptions to the limitation on the number of dwelling units that may be assisted in any one building. The commenters' suggestion is not included in the statutorily permissible exceptions because inclusion of the type of developments suggested would expand the exceptions allowed under the law. Nonetheless, the final rule expands the definition of supportive services to include services other than those under the FSS program.

Comment: Two commenters stated that if HUD follows the recommendation to expand the definition of "supportive services" that qualify for the exception to the 25 percent cap on project-based units in a building, the rule should make it clear that when an owner has entered into a contract with a public agency other than a PHA to provide supportive services, it is that public agency which has the primary responsibility for monitoring the delivery of those services. As with the competition for project-based vouchers in § 983.51(b)(2), the rule should permit PHAs to rely on the established selection procedures and monitoring expertise of other agencies.

HUD Response: HUD has considered this comment, but is not adopting it. Under the Project-Based Voucher

program, HUD's contractual relationship is with public housing agencies. The Department can neither impose nor enforce requirements on entities with which the Department has no legally enforceable agreement.

Comment: One commenter suggested that the rule add additional language to three sections. The additions are as follows:

A new § 983.56(b)(4): "(4) Monitoring of supportive services. (i) The PHA may determine that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) suffice to establish the units as "excepted units" for purposes of this section.

"(ii) Where the owner has not entered into contracts with public agencies to deliver supportive services or where the PHA has reasonably determined that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) do not suffice to establish units as 'excepted units' for purposes of § 983.56(b)(2)(B), the PHA may require the owner to submit such documentation as is reasonably required to establish the units as excepted units for purposes of this section."

New §§ 983.283(d)(i) and (ii), to be added at the end (before the semicolon) of § 983.203(d): "including (i) the public agencies other than the PHA, if any, with whom the owner and/or its affiliates and/or its subcontractors intends to contract to provide funding for or direct supportive services for any units receiving PBV assistance; and (ii) a description of the monitoring and reporting requirements regarding the delivery and efficacy of the supportive services under any contracts identified under (i)."

The following, to be added at the end (before the period) of § 983.209(b):

"* * * and the owner and/or its affiliates and/or its subcontractors are in compliance with any existing contracts with public agencies to provide funding for or direct supportive services for any units receiving PBV assistance."

HUD Response: HUD has considered these comments and has determined that, because of the variety of local circumstances and supportive services that may be provided, it is preferable for PHAs, which know the local area and the needs of residents, to administer the details of this aspect of the statute and regulations.

Comment: The site selection standards in proposed § 983.57 would require that project-based assistance "be consistent with the goal of expanding housing opportunities" and that projects using PBV be sited to "promote greater

choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons." One commenter stated that this standard would prevent affordable housing from being developed in areas previously dominated by urban blight, thus attracting residents. Properties outside areas with a high concentration of low-income persons are mostly unaffordable or unwilling to accept government subsidy. Conversely, another commenter stated an objection to the proposed rule's elimination of any standard for deconcentration and expansion of housing and economic opportunity, and suggested that HUD adopt an alternative standard, based on waiver requests, that allows PBV units in mixed-income projects and neighborhoods undergoing "gentrification" while ensuring that the PHA also creates PBV units in non-poor neighborhoods. Another commenter stated that the rule should allow projects to be sited in areas of poverty concentration where it would allow access to supportive services. "It is the supportive services that will ultimately help lift a family out of poverty rather than the location of the housing outside an area of concentrated poverty."

HUD Response: The requirement that project-based voucher contracts be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities is a clear statutory mandate and, therefore, cannot be changed as suggested by these commenters. In addition, these are factors under SEMAP scoring. This final rule provides guidelines that PHAs must consider in selecting project-based voucher proposals to ensure that, in selecting projects under the program, the statutory goal of deconcentrating poverty and expanding housing and economic opportunities is satisfied.

Comment: Two commenters questioned whether the site and neighborhood standards in proposed § 983.57(d) should apply to the PBV program. Four commenters stated that some of the site and neighborhood standards do not seem meant to apply to existing buildings. One commenter stated that the PHA should determine whether in the context of its affordable housing goals it makes sense to provide PBVs to the project. Also, the rule should be clearer on whether the PHA or HUD makes the determination that site and neighborhood standards are met. Two commenters stated that the PHA should make the determination. One commenter stated that the proposed rule is unclear about the process for satisfying site and neighborhood

standards, and that units may be lost because landlords in low poverty areas will not wait to rent their units on the private market while a review process is underway.

HUD Response: HUD has considered the comments, but does not adopt them. The standard for existing housing is reasonable and not as stringent as the standard for New Construction. The requirements of proposed § 983.57(d) (§ 983.58(d) of this final rule) are applicable to existing housing under the PBV program. The rule details the requirements that must be considered in determining whether site and neighborhood standards are satisfied.

Comment: Several commenters questioned proposed § 983.58 on environmental reviews. Commenters stated that environmental review requirements should not apply to existing units because actions such as demolition, rehabilitation, and construction are not taking place. A commenter stated that properties for which an environmental review was previously done under another program should be exempt from environmental reviews in the PBV program. Another commenter stated that the section is overbroad as drafted, because it appears to prohibit PBV contracts being executed with owners who have purchased properties prior to HUD completing its environmental review. A commenter stated that where a PBV contract is for existing units and will have an initial HAP term of 5 years or less, parts 50 and 58 should not apply. A commenter stated that "to apply these requirements to existing public accommodations will make it even more difficult for landlords in strong markets to participate in the Special Mobility Program * * *." Moreover, the delays in waiting for approvals will result in lost units.

HUD Response: Existing housing as used in the PBV regulation is normally categorically excluded from the requirements for an environmental assessment and finding of no significant impact under the National Environmental Policy Act (NEPA). However, existing housing is subject to the applicable federal environmental laws and authorities listed at 24 CFR 58.5.

The responsible entity will conduct the environmental review in accordance with 24 CFR part 58 (or HUD will complete an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review). In the case of existing housing that is reviewed under part 58, the responsible entity must determine whether or not PBV assistance is

categorically excluded from review under NEPA and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

Assistance to a project previously approved under another HUD program for which an environmental review was completed under 24 CFR part 58 is considered supplemental assistance and is categorically excluded and not subject to further review under the related laws in 24 CFR 58.5, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR 58.47. This exemption is limited to contracts for the same units that previously had an environmental review completed under part 58.

In accordance with the NEPA and the Council on Environmental Quality's implementing regulations, the Department does place limitations on actions before completion of the environmental review. The final rule is clear at § 983.58(d) that the PHA may not enter an Agreement or a HAP contract with an 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 part 983, until an environmental review is complete. However, there is no intent to prohibit an owner from acquiring a property before the owner enters the PHA's property selection process under the PBV program.

Comment: A commenter stated that in proposed § 983.59 and elsewhere, there are provisions regarding the selection of PHA-owned units that are problematic, because the rule establishes up-front procedural hurdles that could be addressed in a less burdensome way by monitoring PHA performance. For example, initial rents must be based on an appraisal by a licensed and certified appraiser. Also, HUD has to approve in advance an independent entity that will perform rent reasonableness and housing quality standards (HQS) determinations. Another commenter stated that the PHA should be allowed to attach PBVs to PHA-owned units without a request for proposals or review by another entity. Similarly, a commenter stated it supported removing the requirement for independent appraisal of PHA-owned units, and stated that PHAs should have the option of allowing an owner to submit an independent appraisal of the requested rents as part of the project selection process.

Similarly, a commenter stated that "in a variety of ways, the proposed rule makes it extremely difficult for PHAs to expand the supply of publicly-owned affordable housing through use of project-based vouchers." This commenter cites language primarily from the proposed § 983.59, as well as from proposed language concerning the competitive selection of units. A commenter stated that "* * * the best way to protect tenants and the public is not through front-end procedural barriers * * * but rather through subsequent monitoring of the outcomes. PHAs * * * should be trusted to comply with the law unless they are shown to have violated the trust." This commenter suggested changes to §§ 983.51(e) and 983.59. The change to 983.51(e) would exempt units owned by the PHA from the review of the selection process, and would provide that the "selection of PHA-owned units will be deemed approved by the HUD field office if the field office fails to act within 30 days of receipt of the required information concerning the selection process." The changes to § 983.59 would be to permit agencies of local government (in cases where the PHA is not part of the local government) to determine rent reasonableness and HQS compliance without HUD approval, and to permit PHAs to select an independent entity other than a unit of local government to perform the same function, also without HUD approval.

HUD Response: HUD has considered these comments, but does not adopt them. The proposed regulation governing PHA-owned units is not intended to reject the use of performance standards nor to impose a more administratively burdensome process than necessary, but rather to protect, to the extent possible, taxpayer dollars by ensuring that such dollars are appropriated fairly and without undue influence and favoritism. It should also be noted that the law requires that an independent agency inspect units and determine the reasonableness of rents in the case of PHA-owned housing under the tenant-based program. The law establishes these same requirements for the project-based component of the voucher program.

Subpart C (§§ 983.101-983.103)

Comment: Proposed § 983.101 requires units to comply with HQS and lead-based paint regulations at 24 CFR part 35. A commenter stated, as to proposed § 983.101(c), that lead paint requirements at 24 CFR part 35, particularly at 24 CFR 35.720(c) and 35.730, which involve reporting by local health officials, could be problematic in

the PBV program. This commenter stated that the rule should be revised to require PHAs to give the local health department the addresses of all PBV units, and to require the PHA to notify each unit owner of their obligations. Also, unit owners need to be informed of their obligation to verify with the health department when they learn the information (about elevated lead levels) from a source other than local health officials.

HUD Response: These comments relate to matters beyond the scope of this rulemaking. Since the proposed rule did not involve the lead paint regulations, those regulations were not made available for public comment. A separate public rulemaking procedure would be required to address lead paint issues.

Comment: One commenter stated that HUD needs to define what qualifies as a unit generally complying with HQS. Two commenters stated that instead of requiring PHAs to inspect all units for HQS compliance prior to unit selection and again prior to HAP execution, the rule should give PHAs discretion to do only one inspection. One commenter also stated that if a project has a Real Estate Assessment Center (REAC) score higher than 60, it should not be necessary to do an inspection after each turnover. One commenter stated that it is unclear what steps a PHA must take to ensure that existing units comply with § 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. One commenter stated that the requirement for inspection of a sample of units at least annually seems to conflict with the SEMAP requirement of inspecting each unit under contract at least annually.

HUD Response: HUD disagrees with the comments relating to a definition of general compliance with HQS, and with the comment relating to Public Housing Assessment System (PHAS) scores. Only in the case of selecting existing units, and for the purpose of defining them as existing units, must the PHA ensure that all of the units substantially comply with HQS. HUD has elected not to define what qualifies as a unit substantially complying with HQS since the units must comply fully with HQS prior to HAP execution. The law also requires that units be inspected for compliance with HQS, regardless of PHAS score. Furthermore, compliance of existing units under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act is defined in 24 CFR Section 8 subpart C. HUD agrees with the comment regarding SEMAP. SEMAP scoring for inspections will be adjusted to remove all PBV units as reflected in the Public Housing Information Center

(PIC) from the annual inspection indicator.

Comment: Proposed § 983.103(d) requires an annual inspection of a random sample of 20 percent of all PBV units in each building of a project. Some commenters stated that inspections should be of a random sample of units in a project, rather than units in a building. One commenter stated that the section should be revised to require inspection of at least two units or 20 percent of the units, whichever is more. Alternatively, this section should restrict the random sample method to multifamily buildings. An inspection of only one unit in a small building does not provide enough of a sample. One commenter supported this section as proposed.

HUD Response: HUD considered the comments regarding random inspections of a project rather than a building, but is not adopting them. The statute requires annual compliance with inspection requirements except that the agency shall not be required to make annual inspections of each assisted unit in the development. HUD believes that the sample should be drawn on a building basis in order to get a good cross-section of the condition of the units in a project. HUD has interpreted the law by requiring at least 20 percent of the units in a building be inspected annually. A development or project could consist of several buildings and a random sample of the project or development would not necessarily ensure an inspection in each building. In response to the issue of sample size, HUD believes that the inspection of at least one unit in buildings where five or fewer PBV units are located is, due to the small number of units involved, an adequate sample.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units (§§ 983.151–983.156)

Comment: Proposed § 983.152(c)(1)(ii) requires that the location of contract units be described in the agreement to enter into a HAP contract. One commenter stated that because units can float, it seeks confirmation that this provision requires identification of the building, not the exact unit.

HUD Response: The “location of the contract units on site” does refer to the location of the contract units in a building in which PBV units will be located and must be described in the HAP contract. Floating units are addressed in § 983.206.

Comment: Proposed §§ 983.153(a) and 983.55 require a subsidy layering review prior to execution of the Agreement by the owner and the PHA. Commenters

stated that subsidy layering analysis should be done prior to the Agreement only when some kind of governmental assistance is being provided to the project. “For instance, we do not think subsidy layering would apply where a PHA chose to use PBVs in a project that already has an FHA insured mortgage” and no new assistance. A commenter stated that subsidy layering requirements should be clarified and explained with a “clear road map” so as not to “chill” PHAs and developers.

HUD Response: The Final Rule retains the requirement for subsidy layering reviews because it is statutory. Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (codified at 42 U.S.C. 3545) requires that the Secretary certify that “assistance within the jurisdiction of the Department” to any housing project shall not be more than is necessary to provide affordable housing after taking into account “other government assistance.”

Comment: Proposed § 983.154(b)(3) requires the owner and the owner’s contractors and subcontractors to comply with applicable federal labor standards, and requires the PHA to monitor that compliance. One commenter stated that the rule should allow PHAs to work with other agencies that have an interest in the project to monitor compliance with the Davis-Bacon Act.

HUD Response: HUD considered this comment but did not adopt it because, although a PHA can subcontract any of its functions, the PHA is still ultimately responsible for monitoring to ensure that the owner and owner’s contractors and subcontractors comply with applicable federal labor standards (see HUD handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs).

Comment: Two commenters stated that the conflict-of-interest provision in § 983.154(e) is too vague and needs additional definition.

HUD Response: The provisions of 24 CFR Section 982 subpart D apply to the project-based voucher program in accordance with Section 983.2(a). Specifically, Section 982.161 details conflict of interest provisions.

Comment: Proposed § 983.155(a) states that the Agreement must state the completion deadline and that the owner must provide evidence of completion. Three commenters stated that the completion deadline should be between the owner and PHA, not HUD. If the project is not completed, the owner will not get the PBVs. HUD should leave the completion determinations to the PHA.

HUD Response: HUD agrees with commenters that the completion deadline should be arranged between the owner and the PHA. Although HUD may specify additional documentation that must be submitted by the owner to evidence completion of the housing, the additional documentation must be submitted to the PHA, not to HUD.

Subpart E—Housing Assistance Payments Contract (§§ 983.201–983.209)

Comment: One commenter stated that in the Special Mobility Program, landlords commit to a number of Section 8 units, but they may not know which specific units will be available. The requirement in proposed § 983.203(c) to identify the location of each contract unit may be difficult to meet. This commenter stated that the rule should be modified to allow HQS inspection and HAP amendment to occur as units become available, with adjustments to lease terms as needed.

HUD Response: The regulation as proposed resolves this issue, since it allows floating units. In § 983.206(a), at the discretion of the PHA, 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. HQS and rent reasonableness must be determined for the new units. Section 983.206(b), allows for amendment of the contract within 3 years of initial execution to add additional units in a building. Leases and HAP contracts do not run concurrently as in the tenant-based program.

Comment: A number of commenters disagreed with the provision for one-year extensions of HAP contracts in proposed § 983.205(b). These commenters stated that the length of extensions should be up to the PHA, and should be for up to the length of the initial term. Commenters stated that the statute allows longer extensions, and that the one-year limitation violates the statute. One commenter suggested that § 983.205(b) should be revised as follows:

In the initial contract, the PHA and owner may agree that, subject to appropriations, they will extend the term of the HAP contract prior to its expiration for a duration agreed upon by the parties if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families and the owner has complied with the contract during the initial term. Subsequent extensions are subject to the same limitations.

Two commenters stated that annual extensions are too administratively burdensome. One commenter also stated

that contractors need an assurance of a longer term. Some commenters stated that one-year extensions could impede the ability of owners to obtain financing, and that the minimum extension should be five years. One commenter stated that the limitation increases the risk to investors who are risk-averse. Three commenters stated that the limitation may also interfere with using LIHTCs. One commenter also suggested that § 983.305(b) be revised to be extendable “for up to an additional 10 years.”

One commenter stated that (as of the time of the comment) annual contributions contracts (ACCs) are only being extended for 3 months. This places the PHA in an awkward position to enter even into a one-year HAP with an owner.

HUD Response: HUD has considered all of the comments and agrees that renewal terms should be more than one year. Accordingly, PHAs will be allowed to approve extensions after the initial term on a five-year or shorter basis as determined by the PHA.

Comment: Proposed § 983.205(d) allows the owner to terminate a contract if the rent falls below the initial rent. In this case, families are given tenant-based assistance. A number of commenters disagreed with this provision.

Five commenters stated that instead of allowing the owner to terminate the contract if rent falls below initial rent, as provided in proposed § 983.205(d), the rule should not allow PHAs to reduce rents below initial rents. Two of these commenters stated also that the proposed rule is contrary to the statutory provision on rent adjustment and will discourage participation in the program. The statute delegates the determination of rent to PHA and owner, outside of HUD’s rulemaking power. Two commenters stated that the initial guidance provided by HUD requires rent adjustments only at the request of owner, and that an arbitrary reduction in rent based on a change in payment standard can create financial stress for the property. One commenter stated that the rule should clarify whether, if the HAP contract is terminated under § 983.205(d), the tenants are eligible to receive enhanced or regular vouchers. Two commenters stated that although the rule protects tenants if rents are reduced and the owner opts out, it may endanger the project because converting the assistance to tenant-based removes a unit and would limit the units available for the intended population and threaten the viability of the project. The rule should remove disincentives for the owner to participate and protect funders

by modifying § 983.301(a)(3) to provide that rents are redetermined at the request of the owner, and deleting §§ 983.205(d) and 983.302(c).

HUD Response: HUD has considered all of the comments and has addressed changes to rent adjustments in § 983.302. However, HUD believes that the law is very specific for setting rents and that HUD lacks the ability to limit rent reductions. Should the owner terminate the HAP contract in accordance with § 983.205(d), families are eligible to receive the same regular (not enhanced) tenant-based vouchers for which they are eligible, at their request, after living in a project-based unit for 12 months.

Comment: One commenter stated that the proposed rule provides that units do not float. PBV units should be permitted to float within a building or development so long as the PHA meets HUD requirements. This commenter suggests new language for 983.206(a):

At the discretion of the PHA and subject to all PBV requirements, the HAP contract may permit PBV units to float within a building or development. The owner must maintain the same number of units and the same number of bedrooms. Prior to attaching PBV subsidy to a unit within a building or development, all PBV requirements must be met, including an inspection confirming that the unit meets HQS standards and a rent reasonableness determination.

One commenter supported a provision to amend the HAP contract by allowing units to “float.” It should be made clear that this should only be done at turnover or where families lose assistance due to being over income to prevent displacement, and there should be safeguards against replacement of accessible units with non-accessible ones. One commenter stated that the rule should not require HAP contract amendments when, because of administrative burden, units are added or substituted. Another commenter stated that allowing units to be substituted “is a great enhancement.” However, the commenter stated that the restriction of substitutions to 3 years after HAP execution (§ 983.206(b)) should be removed, to allow the PHA to help an additional family in cases where the assistance drops to zero but the family prefers to stay in the unit and pay market rent.

HUD Response: HUD believes the flexibility sought by the commenters already exists and therefore is not adopting the proposed change to § 983.206(a). In § 983.206(a), at the discretion of the PHA, 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. Further restrictions regarding "floating" units is not necessary since substituting units must be in compliance with all PBV requirements. HUD believes that units cannot be assisted without a contractual agreement obligating the assistance necessitating a revision to the HAP contract. Section 983.206(a) does not restrict the substitution of units to three years. The three-year limit applies only to adding new units to the original PBV contract.

Comment: Proposed § 983.206(c) states that 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. Five commenters stated that in order to protect against displacement and transition to lower-income families over time, HUD should change its position that there is a single anniversary date for all units under HAP contract within the full term of the contract. One of these commenters stated that some proposals may require a complex transition of units into the program over time. The PHA and owner should be able to structure the admission requirements in the PHA's administrative plan in a manner to best serve both current residents and those on the PHA waiting list.

HUD Response: HUD does not accept that in order to protect against displacement and transition to lower-income families over time, HUD must change its position on a single anniversary date for all units under one HAP contract. The commenter did not elaborate on how the same anniversary date for all units under the same contract would displace and transition lower-income families. Once units are accepted into the program, they are placed under a HAP contract. Eligible current residents are given priority for admission in accordance with 983.251(b).

Comment: Proposed § 983.209 requires the owner to certify to certain matters. Three commenters stated that the owner may not be able to certify that each unit receiving assistance is occupied by a family referred by the PHA because some families receiving assistance due to displacement provisions will not have been referred by the PHA.

HUD Response: In response to these comments, HUD will clarify that only families referred by the PHA may be assisted. Section 983.251(b) protects in-place families by providing a priority for admission to the PBV program. However, these families must also be

determined eligible by the PHA and referred to the owner by the PHA.

Comment: One commenter stated that the prohibition on renting to the owner's relatives in proposed § 983.209(e) should be subject to an exception when necessary to make a reasonable accommodation, as in current 24 CFR 982.306(d).

HUD Response: The comment was not adopted. HUD intentionally differentiates in this case between the tenant-based voucher and project-based voucher programs. To allow an owner of a project-based voucher development to rent to close family relatives (whether disabled or not) creates a systematic incentive to owners to misuse the program. Persons requesting a reasonable accommodation in policies in order to effectively participate in the housing choice voucher program are not harmed by restricting the exception to renting to relatives to the tenant-based program.

Subpart F—Occupancy (§§ 983.251–983.261)

Comment: Proposed § 983.251 regulates how families are selected for the PBV program. Commenters stated that the PHA and the owner should be able to structure the admission requirements to best serve both current residents and those on the waiting list. While generally supporting the anti-displacement provision (§ 983.251(b)(2)), the commenters stated that this provision should be revised in the final rule to allow discretion in providing current families with PBV assistance. A commenter also stated that owners and PHAs should be given the flexibility to lease units on a rolling basis in compliance with the PHA's waiting list policy. Owners should be able to contract for the maximum number of units needed to accommodate the greatest number of eligible households in a way that can be financially supported over time.

HUD Response: HUD does not agree with these comments. Eligible in-place families should not be penalized if units in the building are selected to receive project-based assistance. However, project-based assistance is limited to 25 percent of the units in a building which means that not all of the eligible families in the building can receive project-based voucher assistance. However, eligible in-place families must be given an absolute preference on the waiting list for units that become available.

Comment: Regarding proposed 983.251(a)(1), one commenter stated that public housing families should have the choice to move to PBV units

without having to put themselves on a separate Section 8 waiting list.

HUD Response: The comment was not accepted because the statute governing the project-based voucher program requires that PHAs select families to receive project-based assistance from its waiting list.

Comment: A number of commenters stated that they support protection for in-place families provided in § 983.251(b). One of these commenters stated that this provision would help prevent families from becoming homeless. Another commenter stated that an eligible family should have a choice between a voucher or relocation benefits. Another commenter stated that eligibility should be determined at the HAP execution stage, so that a family could become eligible during construction, and that HUD should consider making the residency determination at the proposal acceptance stage. Since the units can float, any ineligible units can be switched at the time of execution of the HAP contract. This commenter also stated that HUD should disregard in-place families when assessing a PHA's compliance with income-targeting requirements since these tenants are already in occupancy and constitute a continuing tenancy. Another commenter stated that it supports the minimizing displacement provision; however, because existing units will now be eligible for PBV, the "inclusion of minimizing displacement should be available to the families of existing units selected for PBV." Another commenter, while expressing general support, also stated that some in-place families might not be appropriate for the project. For example, the in-place family may be a single individual and the project may be for chronically mentally ill homeless individuals. Another commenter stated that it supports approving existing housing with tenants in place. Otherwise, the supply of housing would be limited, and issues of preference usually get resolved on turnover. "The benefits outweigh the slowing down of assistance to those on the waiting list."

HUD Response: The suggestion regarding a choice between a voucher and relocation benefits was not adopted. This is because relocating an in-place family in these circumstances would be inconsistent with HUD's policy to minimize displacement. An in-place family cannot otherwise be placed ahead of others on a PHA's waiting list unless a PHA develops such a preference. The comment regarding establishing eligibility at the time of HAP execution would not be consistent with HUD policy to minimize

displacement and protect in-place tenants. Providing such protection is appropriate only when a decision is made to provide PBV assistance. It is for this reason that HUD determined that an in-place family must be eligible on the proposal selection date. The suggestion involving choosing appropriate in-place families cannot be considered because it would be inconsistent with civil rights laws. Specifically, the PHA's administrative plan cannot provide for a selection preference for the program based on a specific disability.

Comment: Two commenters stated that priority for in-place families for assistance needs to be balanced against the needs of the families on the waiting list, and suggests limiting the number of prioritized in-place families to 20 to 30 percent of the total. One commenter advocated "allowing owners some discretion in determining which families are eligible for PBV assistance, consistent with administrative plan and waiting list policies." Another commenter stated that the section clarifying that PHAs must offer assistance to eligible in-place tenants who occupy proposed contract units will facilitate the use of PBVs to preserve existing housing. However, the rule should give PHAs the flexibility, between the time the Agreement and HAP are executed, to substitute new tenants as the in-place tenants. Also, PHAs should be allowed to select units with ineligible tenants and move the tenants to appropriate units. A commenter stated that the PHA should have flexibility to offer tenant-based vouchers to in-place families. Also, the rule should clarify whether in-place families have priority for the program or the particular project they occupy. A commenter stated that from a practical perspective, it will not ordinarily be necessary to use occupied units in partially assisted developments because of turnover. While there may be meritorious cases for using an occupied unit, a PHA could use this provision to steer assistance toward favored sites and tenants.

HUD Response: The suggestion to provide priority for only 20 to 30 percent of in-place families is contrary to HUD policy to minimize displacement. The law requires that PHAs determine eligibility of families under the project-based voucher program and PHA selection of families from the waiting list. The PHA must give in-place families that are eligible for assistance a selection preference to minimize displacement. When such families move out of the PBV unit, the unit will then become available for a waiting list family.

Comment: Proposed § 983.251(c) governs the selection of families from the PBV waiting list. One commenter stated that the rule should allow for preferences for persons with disabilities for units in which disabled individuals will be receiving specialized services if the persons are recognized by Congress as a protected class because of their disabilities. Placing preferences for these recognized classes would minimize the need for waivers. Another commenter stated that HUD, in supportive housing with "wraparound services," should allow PHAs and owners to select the applicants who need the services and allow preferences based on eligibility for services offered at specific complexes. Another commenter stated that "in some circumstances, supportive housing projects that serve people with disabilities that grant preference to applicants who are eligible for the supportive services offered may be entirely appropriate * * *"

HUD Response: HUD agrees with the commenters. HUD is revising this final rule to allow a selection preference for disabled persons in need of the services offered at a particular PBV project.

Comment: Proposed § 983.251(c)(3) provides for project or building-specific waiting lists. Three commenters stated that they support project-specific waiting lists. One commenter stated that it supported selection criteria for individual projects. Two commenters stated that "we applaud the proposed rule's clear statement that a PHA may maintain project-specific waiting lists, a policy that is essential for permanent supportive housing to operate efficiently." Another commenter stated that it supports separate waiting lists for PBV units.

HUD Response: HUD agrees with the commenters. The rule gives PHAs the ability to establish project-specific waiting lists.

Comment: Two commenters objected to the income-targeting provision in proposed § 983.251(c)(6). One stated that the PBV program will create disincentives for PHAs because this section would require that 75 percent of families be extremely low-income. This will result in higher assistance payments and fewer families being served. Another commenter stated that income targeting should be removed entirely. It is not in line with upcoming budget reductions and does not allow PHAs to make decisions on how to spend their funding.

HUD Response: HUD has considered these comments but declines to adopt them for the following reason. Section 8(o)(13)(f) makes the statutory

requirements governing income targeting applicable to the project-based voucher program. The income targeting requirements are program-wide requirements. PHAs need not apply the requirements on a project-by-project basis.

Comment: Commenters stated that § 983.251(c) should be revised to allow for preferences based on eligibility for supportive services being offered, while at the same time preserving, for persons with disabilities, the principle that participation in supportive services is voluntary. Two commenters agreed with preferences based on eligibility for supportive services and stated that the civil rights concepts embodied in Section 504 and part 982 regulations should be preserved in this rule.

These commenters recommended an additional paragraph be added to proposed § 983.251(c) providing that "in appropriate circumstances to be determined by the PHA in its PHA plan * * * the PHA may adopt preferences on its project-specific lists for families who are eligible for the services to be offered in conjunction with an individual project, building, or set of units. However, the owner must permit occupancy by any qualified person with a disability who could benefit from the housing or services provided, regardless of the person's disability."

HUD Response: HUD agrees. The final rule allows a selection preference for disabled persons in need of the services offered at the PBV project.

Comment: Proposed § 983.251(c)(5) provides that "the PHA may place families referred by the PBV owner on its PBV waiting list." One commenter stated that this section should clarify that the PHA may not provide owner-referred families with any admission rights not enjoyed by other families. Otherwise, the owners would become the gatekeepers for the PBV program. This, the commenter argued, would be inappropriate. Another commenter stated that this section and proposed § 981.251(c)(3) (providing for separate project or building waiting lists) essentially negate (c)(1) (providing for selection from the PHA waiting list), and allow landlords to make referrals to a site-based list that can have its own preferences. This appears inconsistent with the statute and would allow individuals referred by the landlord to jump over the community-wide waiting list. Unlike public housing, there is no provision for civil rights monitoring of these lists. This commenter recommended certain revisions:

In proposed § 983.251(c)(3), strike the last sentence reading, "In either case, the waiting list may establish criteria or

preferences for occupancy of particular units.”

Revise proposed § 983.251(c)(5) to read, “Subject to its waiting list policies and selection preferences specified in the PHA administrative plan, the PHA may place families referred by the PBV owner on its PBV waiting list.”

HUD Response: HUD has considered these comments and believes that the commenters misunderstood HUD’s intent. The PHA must administer its waiting list in accordance with its administrative plan that governs admission policies. The PHA may establish preferences for selecting families from its waiting list. The law governing the PBV program requires that families be selected from the PHA’s waiting list and allows the PHA to place on its waiting list families referred by an owner. The statute further provides that a PHA may maintain a separate waiting list for a particular project.

Comment: Proposed § 983.251(c)(7) provides that in selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer to the owner those families that require such features (see 24 CFR 8.26 and 100.202). A commenter stated that this section should also include material regarding the owner’s duties in connection with families that require accessibility features.

HUD Response: This commenter’s suggestion was not adopted since a requirement to provide materials regarding owner’s duties in connection with families that require accessibility features is beyond the scope of this rulemaking.

Comment: A commenter stated that the waiting list system should allow owner referrals during times of under-utilization and PHA referrals to owners during times of over-utilization. Another commenter stated that the rule should remove the requirement to use the PHA’s waiting list when the project serves homeless or special needs populations, as such populations are not well-served by using PHA waiting lists.

HUD Response: The rule retains the proposed rule language. The statute requires that the PHA maintain waiting lists for project-based units. However, the PHA may use separate waiting lists for PBV units in individual projects or buildings or may use a single waiting list for the PHA’s whole PBV program. PHAs may also give a selection preference for homeless individuals and homeless families.

Comment: Commenters stated that there is nothing in the rule to cover tenants who become over-income. This commenter states that there should be a

6-month grace period as in the tenant-based program, citing § 982.455 (which provides that the HAP contract terminates 180 days after the last housing assistance payment to the owner). Income changes may be temporary, or the family could relocate to a unit with higher gross rent for which they are eligible. One commenter states that a sentence should be added to proposed § 983.259 that reads “if a family is over-income, subsidy shall be suspended for six months.”

HUD Response: HUD disagrees that there should be a 6-month grace period for families that no longer require housing assistance in a PBV unit. The provisions of Section 982.455 do not apply to the PBV program. If a unit is occupied by a family for which housing assistance is no longer required, the PHA has the option of removing this unit from the HAP contract or substituting the unit with a comparable unit in the building for occupancy by another eligible family in need rather than hold off on the use of the assistance for six months.

Comment: Proposed § 983.254(b) provides that if any contract units have been vacant for a period of 120 or more days since owner notice of vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such a period. One commenter stated that HUD should clarify that this reduction is not the same as termination of the HAP, but merely an adjustment to the payment. In addition, HUD should make clear that the PHA would still have the duty to fully utilize its Section 8 funding in some manner, such as in the tenant-based program. The commenter based this argument on 42 U.S.C. 1439(a) and 42 U.S.C. 1437f(o)(K). One commenter stated that it should be more clearly stated that the PHA may not reduce the units under HAP contract if the units have been vacant 120 days or more due to the PHA’s failure to refer a sufficient number of families to owner.

HUD Response: HUD has considered the comment, but is not adopting it for the following reasons. HUD believes that the regulation is clear upon scrutiny. A reduction in the number of units under the PBV HAP contract is not synonymous with termination of the HAP contract. Funding utilization is the responsibility of the PHA regardless of whether the vouchers are project-based or tenant-based. Since the owner can refer families to the PHA’s waiting list for PBV, HUD disagrees that units should not be removed from the HAP

contract if the units have been vacant 120 days or more due to the PHA’s failure to refer a sufficient number of families to the owner. Additionally, subject to a PHA’s policy on vacancy payments, an owner is not receiving subsidy on units that remain unoccupied and the PHA can remove such units from the HAP contract.

Comment: Proposed § 983.256(c)(3) states that the lease must state “the term of the lease (initial term and any provision for renewal).” One commenter stated that this section should be revised to require a renewal provision in the lease or tenancy addendum.

HUD Response: The lease used in the PBV program is comparable to lease requirements in the tenant-based program. HUD does not require specific renewal provisions in the lease or tenancy addendum since this is a matter of local rental practice and is up to the owner.

Comment: Proposed § 983.257 states that “Section 982.310 of this chapter applies with the exception that § 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for personal, family, or a non-residential rental purpose.)” Two commenters stated that “we do not understand why in the PBV program it would not be good cause to terminate a tenancy for business or economic reasons similar to the voucher program.”

HUD Response: In the tenant-based program, each HAP contract is for a specific unit. In the project-based program, most HAP contracts will be for more than one unit. Since HAP contracts under the PBV program will be for multiple units, the owner cannot claim a business or economic reason to terminate a tenancy since the unit is obligated, under any HAP contract, to be an assisted unit for the term of the contract. The regulation provides, however, that if the owner terminates a lease without good cause, the unit must be removed from the housing assistance payments contract.

Comment: Two commenters stated that HUD should use 24 CFR part 247 (which applies to section 221(d)(3) and (d)(5) below market interest rate projects; projects under section 236 of the National Housing Act; and projects under section 202 of the Housing Act of 1959) as the rule for termination. Part 247 requires good cause for termination, and the proposed section does not. Under the proposal, an owner can in effect capriciously remove a tenant from the PBV program and force the tenant into the tenant-based program. One

commenter also stated that as an alternative, if HUD does not adopt the standard in 24 CFR part 247, HUD should add a clause in § 983.256 of this final rule that would require owners to offer lease renewal unless they have good cause to do otherwise. One commenter also stated that good cause should be required for termination of tenancy.

HUD Response: The final rule clarifies provisions on lease termination in response to comments. As a general matter, 24 CFR 982.310 (other than paragraphs (d)(1)(iii) and (iv)) applies and describes the events that constitute good cause for lease termination. Final § 983.257(b) describes the owner's options upon lease expiration: To renew the lease; refuse to renew for "good cause" as defined; or refuse to renew without good cause, in which case the PHA would provide the family with a tenant-based voucher and remove the unit from the HAP contract. In this latter case, the unit would be removed from the PBV HAP contract. HUD believes that these changes clarify the issue.

Comment: Proposed § 983.259 provides that if the PHA determines that a family is occupying a wrong-size unit, the PHA must offer the family the opportunity to receive continued housing assistance in another unit. This assistance may be in the form of another Section 8 project-based unit, tenant-based voucher assistance, or other comparable project-based or tenant-based assistance.

Two commenters stated that wrong-size unit termination provision is unfair to the project when the fault is with the family and not the owner. The owner should be able to evict the family under these circumstances. The same should apply when the PHA offers the family other comparable assistance and the family fails to act on the offer.

Referring to relocation from a wrong-size unit, a commenter stated that tenants should have more choice of the replacement assistance to be provided and the right to reject a unit for good cause, and that the rule should require the PHA to offer an appropriately sized affordable unit. Also, if an appropriate alternate unit is identified, the tenant should have an opportunity to reject the unit for good cause. This commenter asks that current § 983.205(b), which provides many of these features, be retained in this rule.

HUD Response: HUD considered but did not adopt these comments for the following reasons. Although the owner may evict a family in accordance with the lease, the PHA must terminate assistance for any unit occupied by an ineligible family once sufficient time is

provided on a tenant-based voucher, or another form of comparable assistance is offered to the family and then refused. HUD disagrees that a family should have the right to reject the offer of another PBV or comparable unit for cause, as that would prolong the time until the unit could be made available to another needy family. However, the regulation in Section 983.259(c)(2) does not preclude the PHA from establishing a policy on unit offers when offering another form of continued housing assistance.

Comment: Proposed § 983.260 gives the family a right to move with tenant-based assistance after one year in the project-based unit. One commenter stated that the occupancy period before the option to move should be extended to two years, because many project-based programs have a supportive services option that goes beyond one year. In addition, other project-based units should be given as a moving option. Finally, the rule should include tenant protection so that tenants don't pay more rent than they would in the voucher program. Another commenter stated that this provision should be changed in the case of transitional supportive housing so that the tenant is encouraged to complete the tenant's services plan before moving. Also, the PHA should be able to substitute other comparable housing. Another commenter stated that it supported the option to move after 12 months, however, there should be stronger language requiring owners to fulfill their PBV commitments before issuing vouchers to families that wish to move, and the PHA must have sufficient funding to fill the vacated unit. One commenter stated that it supports the ability of a family to leave with a tenant-based voucher because it will be an incentive to participate in transitional housing programs.

HUD Response: The right of tenants to move after one year is statutory and cannot be revised in the manner suggested. Transitional housing is not a factor because, as noted above, transitional housing often has requirements incompatible with this aspect of the PBV program, and hence is not eligible for assistance under this program.

Comment: Three commenters stated that the provision allowing families to move after 12 months should be eliminated. It will complicate waiting lists, contradict PHA preferences, and restrict capacity for assistance. Owners may be reluctant to participate knowing they could lose their tenants in a year, and families could circumvent the tenant-based waiting list. It adversely

impacts the PHA and allows applicants to jump the waiting list.

HUD Response: Tenant mobility after 12 months is a statutory requirement and cannot be eliminated. However, when the family moves out of a unit with project-based assistance, the PHA is required to refer other families to the owner to be selected to occupy vacated units.

Comment: Proposed § 983.260(a) would have provided that "if the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance." A commenter stated that there should be good cause exceptions allowing family to move within the first year.

HUD Response: The comment is not adopted. The statute provides only for continued assistance under the tenant-based voucher program or other comparable assistance after the family has occupied the dwelling unit under a PBV HAP contract for 12 months. This final rule places this statement in a new § 983.260(d).

Comment: Commenters stated that, to follow § 504 and HUD's ADA regulations and avoid unnecessary concentration and isolation of persons with disabilities, the rule should adopt project size limits for persons with disabilities similar to the 811 program Notice of Funding Availability (NOFA). These commenters suggested a new § 983.263 be added setting size limits for buildings serving disabled persons. Independent living projects would be capped at 24 PBV units serving persons with disabilities. Group homes serving persons with disabilities would be capped at six PBV units. The language would also include criteria for the HUD field office to grant exceptions to these limits.

HUD Response: HUD disagrees with comments that would unduly restrict the PBV program by limiting the size of buildings or group homes occupied by persons with disabilities.

Comment: Proposed § 983.261(c) provides that a family residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception must vacate the unit within a reasonable period of time established by the PHA. Four commenters stated that the rule should also state that a family in an excepted unit (that is, a unit excepted from the 25 percent cap on project basing) not in compliance with its FSS obligations can be evicted.

HUD Response: The law requires that excepted units must be made available to families that receive services. If the

family no longer qualifies for the excepted unit because it is in non-compliance with its obligations to receive supportive services, the PHA may terminate assistance on that basis. (See final § 983.261(c)). If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. (See final § 983.261(d)).

Subpart G—Rent to Owner (§§ 983.301–983.305)

Comment: A commenter stated that “we do not favor the proposed rent limits,” that is, the higher of 110 percent FMR or the HUD-approved exception rent. These limits are too restrictive, and will limit project basing to the lower end of the market and interfere with income mixing. Another commenter agreed and stated that while there are sharp reductions in payment standards due to budgetary concerns, FMRs are not falling. The program will not attract quality developers and favorable financing. Two commenters stated that the statute allows for a different payment standard, as well as a higher payment standard, as long as the rent reasonableness test is met. Two other commenters stated that they object to § 983.301(b)(1) as unjustifiably eliminating flexibility to use a higher range of payment standard in particular cases. Such a rule will reduce the willingness of landlords to enter the program and thus have the opposite effect of encouraging PHAs to set higher payment standards across the board, potentially increasing overall costs. One of these commenters stated that §§ 983.205(d) and 983.302(c) should be deleted, and §§ 983.301(a)(3) and 983.301(b) should be revised to read as follows (new material is in *italics*):

§ 983.301(a)(3): The rent to owner is redetermined *at the request of the owner and not more frequently than the annual contract anniversary* in accordance with this section and § 983.302.

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

- (1) *110 percent of the fair market rent* for the unit bedroom size minus any utility allowance;
- (2) The reasonable rent; or

(3) The rent requested by the owner; *except that the rent to owner never is required to be less than the initial approved rent to owner.*

Another commenter also stated that the rents should be required to be redetermined only at the request of the owner and that the requirement to annually redetermine rent be removed.

HUD Response: The final rule provides that the rent to owner may be established in accordance with the statutory maximum. Thus, the final rule provides at Section 983.301(b):

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

(1) An amount determined by the PHA, 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;

(2) The reasonable rent; or

(3) The rent requested by the owner.

Comment: One commenter stated that the rent provisions take away the PHA’s flexibility to set rents by limiting the rents to the existing tenant-based payment standard. By statute, PHAs have authority to raise the rent to the higher of 110 percent of FMR or the PHA’s payment standard. Two commenters stated that in economically robust areas the maximum rent of 110 percent of FMR is more appropriate, and rent reasonableness checks will keep a PHA from overpaying. Three other commenters made similar comments.

HUD Response: The commenters’ concerns have been addressed in the HUD response immediately above.

Comment: One commenter stated that proposed § 983.301(a)(3) should be rewritten to state: “The rent to owner is determined at the request of the owner and not more frequently than the annual contract anniversary in accordance with this section and § 983.302.”

HUD Response: The final rule addresses the commenter’s concern. It provides that the rent to owner shall be redetermined when the owner requests an increase in the rent to owner at the annual anniversary of the HAP contract or when there is a 5 percent decrease in the published FMR.

Comment: Two commenters stated that limiting rents to the PHA payment standard means that if the payment standard is reduced, rents must be reduced. This provision of the rule seems contrary to the statutory provision on rent adjustments (8)(o)(13)(I)). If this provision remains it would likely discourage owner willingness to accept PBV contracts. In addition, lack of rent stability would

make it hard to leverage additional financing.

A number of commenters stated that § 983.301(b) should state that the PHA may establish a separate payment standard for a PBV project.

HUD Response: HUD agrees and is adopting an FMR-based standard as described in the above responses.

Comment: Proposed § 983.301(c) provides for a different rent-to-owner calculation for certain LIHTC units. Three commenters stated that the higher rent for LIHTC units appears to apply only when there are LIHTC units not receiving PBV assistance. This appears to prohibit the higher tax credit rent for buildings that are 100 percent PBV. These commenters stated that for projects for the elderly, persons with disabilities, and families receiving supportive services, HUD should determine what the maximum tax credit rent would be and set the rent accordingly. One commenter stated that the rule runs counter to the Department’s existing treatment of Section 8 assistance in conjunction with LIHTCs. As currently proposed, the rule would lead to concentration in qualified census tracts. Low-income families need services and those services must be supported by project rents. This commenter recommends that HUD adhere to its existing treatment of Section 8 assistance with LIHTCs in PIH notices 2003–32 and 2002–22.

HUD Response: HUD has determined that it is inappropriate to allow owners to collect higher rents from voucher families than they are allowed to collect from tax credit families. HUD has determined that allowing higher rents would result in a duplicative subsidy. Accordingly, LIHTC projects under 24 CFR 983.304(c)(1)(v) will be treated in the same manner as Section 236 and Section 221(d)(3) below-market interest rate (BMIR) projects. HUD believes that the rule text, as drafted, accurately reflects the language of § 8(o)(13)(H) of the 1937 Act (42 U.S.C. 1437f(o)(13)(H)).

Comment: One commenter stated that proposed § 983.301(f)(2) (providing that the PHA may not apply different payment standard and utility allowance amounts in the project-based and tenant-based programs) is inconsistent with the statute.

HUD Response: HUD considered the comment regarding utility allowance schedules, but is not adopting it. The final rule provides that the PHAs may not establish rents under the PBV program that differ from the PHAs’ tenant-based payment standards. The statute governing the PBV program is silent on utility allowance schedules. Utility allowance schedules are

determined based on community rates and average consumption. It is therefore not necessary to establish separate utility allowance schedules for the PBV program.

Comment: Proposed § 983.302 provides for an annual redetermination of the rent to owner prior to the annual anniversary of the HAP contract. A number of commenters stated that § 983.302(c) should be deleted from the rule because it is contrary to statute and would discourage owners, lenders, and investors from program participation. This section states that if the annual redetermination shows that the rent to the owner has decreased, the actual rent to the owner must be decreased regardless of whether the owner has requested an adjustment.

HUD Response: HUD disagrees with the interpretation that the proposed § 983.302(c) is contrary to the statute. HUD believes that any rent adjustments under the statute may not exceed the maximum permitted under the law (*i.e.*, an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or any exception payment standard approved by the Secretary)) and that the statute does not limit adjustments to upward adjustments. Nonetheless, to accommodate the commenter's concerns, the final rule provides that upon an owners request for a rent adjustment or when there is a 5 percent or greater decrease in the published FMR, rents shall be redetermined.

Comment: In proposed § 983.301(c)(3) on LIHTC rents, the word "chargeable" would be better than the word "charged" in the phrase "the 'tax credit rent' is the rent charged for comparable units of the same bedroom size* * *".

HUD Response: The comment was considered but not adopted. The use of the word "charged" appropriately conveys the definition of tax credit rent that the owner is collecting for the unit.

Comment: Proposed § 983.303 provides that the rent to owner must not exceed the reasonable rent as determined by the PHA. Three commenters, while agreeing that rents are subject to the rent reasonableness test, stated that the rule establishes numerous times at which the PHA must determine rent reasonableness. This, the three commenters argued, is unduly burdensome and will inhibit participation in the program by lenders and investors. HUD should require only an annual determination, they argued. Another commenter stated that a rent comparability study should be conducted initially and then once every 5 years, except where an upward rent adjustment is proposed. No statutory

section requires annual redeterminations of rent during a contract unless rents are increased. One commenter stated that PHAs should be required only once a year to determine rent reasonableness and at the time a new PBV contract is executed. Another commenter stated that two comparables, rather than three, should be required. Another commenter stated that rent, once determined to be reasonable, should not be redetermined at no less than 3-year intervals. Another commenter stated that the requirement that rents be redetermined annually will result in reduced rent to the owner if the payment standard is reduced. This is contrary to section 8(o)(13)(I) of the 1937 Act, which delegates rent determinations to the PHA and to the owner. Furthermore, this provision will make it difficult to use PBV with HOME funds because it is inconsistent with HOME regulations.

HUD Response: The final rule retains the requirements concerning rent reasonableness determinations. Section 8(o)(10)(A) of the United States Housing Act of 1937 requires that rents under the program be reasonable. The implication is that rents must be reasonable at all times. The circumstances under which a PHA is required to redetermine rent reasonableness under the PBV program are not overly burdensome. The final rule also retains the requirement that three comparables must be used. Three comparables, as opposed to two, will more accurately reflect market rental conditions.

Comment: Proposed § 983.304 provides that in the case of projects with HOME funds or other subsidies, the PBV rent may not exceed the rent permitted under the other subsidy program. Four commenters stated objections to this section. This section would appear to authorize PHAs to continue an ongoing subsidy layering review that would create uncertainty with respect to rent levels and discourage participation by private lenders and investors. Two commenters stated that an owner interested in preservation should be able to seek a waiver to allow a Section 236 subsidy in a partially assisted Section 8 project to be allocated to the units with no Section 8 assistance. These commenters state that in § 983.304(b)(2) the words "subsidized" and "(basic rent)" should be deleted. One commenter stated that § 983.304(d) lacks clarity and suggests a revision to § 983.304(d) (the new material is in *italics*):

"At its discretion, a PHA may reduce the initial rent to owner to reflect the assumptions used in the award of other subsidy, including tax credit or tax

exemption, grants, or other subsidized financing."

HUD Response: Rents at projects receiving other forms of subsidy (*e.g.* Section 236) combined with project-based voucher assistance are restricted to the rent restrictions of the applicable subsidized program. Thus, the PBV rent may not exceed the subsidized rent established under the procedures for other subsidized programs.

Subpart H—Payment to Owner

Comment: Proposed § 983.351(b) provides for monthly payments to the owner for each unit that complies with HQS and is leased to and occupied by an eligible family. Four commenters stated that this provision should also indicate that the PHA will include any vacancy payments that it has previously agreed to provide in its monthly assistance payment to the owner.

HUD Response: HUD has considered this comment and is not adopting it. Section 983.351 is titled "PHA payment to owner for occupied unit (emphasis added)." Units for which an owner is receiving vacancy payments are not occupied and are discussed in Section 983.352.

Comment: Proposed § 983.352(b) provides for vacancy payments at the discretion of the PHA. One commenter stated that vacancy payments should be mandatory for all PHAs.

HUD Response: The statute governing the PBV program requires that if the HAP contract allows for vacancy payments, that such payments may be made at a PHA's discretion.

Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m. in the Office of Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), has reviewed and

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Executive Order 13132, Federalism

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for federal

agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 983 to read as follows:

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

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart A—General

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

Subpart B—Selection of PBV Owner Proposals

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

Subpart C—Dwelling Units

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

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

- 983.151 Applicability.
- 983.152 Purpose and content of the Agreement to enter into HAP contract.

- 983.153 When Agreement is executed.
- 983.154 Conduct of development work.
- 983.155 Completion of housing.
- 983.156 PHA acceptance of completed units.

Subpart E—Housing Assistance Payments Contract

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

Subpart F—Occupancy

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

Subpart G—Rent to owner

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

Subpart H—Payment to Owner

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

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

Subpart A—General

§ 983.1 When the PBV rule (24 CFR part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

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

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

applicability of voucher program definitions at § 982.4, see § 983.3.

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

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

(2) Provisions on portability;

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

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

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

(2) Subpart G of part 982 does not apply, with the following exceptions:

(i) Section 982.10 (owner termination of tenancy) applies to the PBV Program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(ii) Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from § 983.256(g), the provisions of § 983.256(g) govern; and

(iii) Section 982.316 (live-in aide) applies to the PBV Program;

(3) Subpart H of part 982;

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

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

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

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

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

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

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

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

§ 983.3 PBV definitions.

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

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

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

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

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

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

Agreement to enter into HAP contract (Agreement). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

Assisted living facility. A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

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

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

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

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 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). See § 983.56(b)(2)(i).

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

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

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

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

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

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

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

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

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

Partially assisted building. A building in which there are fewer contract units than residential units.

PHA-owned unit. A dwelling unit owned by the PHA that administers the voucher program. PHA-owned means that the PHA 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.

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

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

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

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

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 the PHA and owner, for use under the PBV program.

Rent to owner. The total monthly rent payable by the family and the PHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

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

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

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

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M

provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state's criteria must include a requirement that the individual has achieved a satisfactory grade upon a state-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331-3352), the individual must comply with any additional standards for state-certified appraisers imposed by HUD.

Tenant-paid utilities. Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

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

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being too large or too small compared to the guideline.

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

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

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

Definitions. See 24 CFR part 5, subpart D.

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

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

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

and section 504 of the Rehabilitation Act.

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

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

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

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

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

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

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

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

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

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

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

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

Waiver of HUD rules. See 24 CFR 5.110.

§ 983.5 Description of the PBV program.

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. In the PBV program, the assistance is "attached to the structure." (See description of the difference between "project-based" and "tenant-based" rental assistance at 24 CFR 982.1(b).)

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

(3) In the case of newly constructed or rehabilitated housing, the housing is developed under an Agreement between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units.

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

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

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

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

§ 983.6 Maximum amount of PBV assistance.

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

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

(c) The PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be

provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24.

(2) The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided payment of relocation benefits is consistent with state and local law, PHAs may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory requirements, including the requirements of 24 CFR 982.155 and other official HUD issuances.

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

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

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

§ 983.8 Equal opportunity requirements.

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

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

§ 983.9 Special housing types.

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

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

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

disabilities who resides in a group home.

§ 983.10 Project-based certificate (PBC) program.

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

(1) The regulations for the PBC program at 24 CFR part 983, codified as of May 1, 2001 and contained in 24 CFR part 983 revised as of April 1, 2002; and

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

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983 codified as of May 1, 2001, except that 24 CFR 983.151(c) on renewals does not apply. Consistent with the PBC HAP, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

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

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

(1) PHA request for PBV Proposals. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

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

(c) *Public notice of PHA request for PBV proposals.* If the PHA will be selecting proposals under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

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

(e) *PHA-owned units.* A PHA-owned unit may 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 PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

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

§ 983.52 Housing type.

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

(a) *Existing housing*—A housing unit is considered an existing unit for

purposes of the PBV program, if at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with Subpart D of this part do not qualify as existing housing.

(b) Subpart D of this part applies to newly constructed and rehabilitated housing.

§ 983.53 Prohibition of assistance for ineligible units.

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

- (1) Shared housing;
- (2) Units on the grounds of a 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, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- (4) Units 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; and
- (7) Transitional Housing.

(b) *High-rise elevator project for families with children.* The PHA may not attach or pay PBV assistance to a high-rise elevator project that may be occupied by families with children unless the PHA initially determines there is no practical alternative, and HUD approves such finding. The PHA may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis.

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

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

§ 983.54 Prohibition of assistance for units in subsidized housing.

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

- (a) 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, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- (g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
- (j) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (k) A unit subsidized with any form of tenant-based rental assistance (as defined at 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 the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

§ 983.55 Prohibition of excess public assistance.

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

housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

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

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

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

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

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

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

(2) Terms (i) "Excepted units" means units in a multifamily building that are specifically made available for qualifying families.

(ii) "Qualifying families" means:

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

services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-

related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under § 983.261(d), and the owner may terminate the lease in accordance with § 983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA 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 under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA 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.

(C) The PHA must 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. The PHA administrative plan must state the form and frequency of such monitoring.

(3) *Set-aside for qualifying families.* (i) 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.

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

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

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

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

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

§ 983.57 Site selection standards.

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

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

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

(i) 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;

(ii) 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;

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

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

(v) 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;

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20

percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

(vii) 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).

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

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

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

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

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

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, 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.

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

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

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

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

(i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or

(ii) 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).

(iii) As used in paragraph (e)(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.

(iv) Units may be considered "comparable opportunities," as used in paragraph (e)(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.

(v) 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:

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

(B) 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.

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

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

(E) 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.

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

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

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

§ 983.58 Environmental review.

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

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

(2) If a PHA objects in writing to 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). 24 CFR part 50 governs HUD performance of the review.

(c) *Existing housing.* In the case of existing housing under this part 983, the RE that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

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

(1) The PHA may not enter into an

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

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

(ii) The responsible entity 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

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

(2) HUD will not approve the release of funds for PBV assistance under this part if the PHA, 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 the PHA submits and HUD approves its request for release of funds (where such submission is required).

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

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

§ 983.59 PHA-owned units.

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

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

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract

rents based on an appraisal by a licensed, state-certified appraiser; and (2) Inspection of PHA-owned units as required by § 983.103(f).

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

(d) *Payment to independent entity and appraiser.* (1) The PHA may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services.

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

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

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

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

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

(2) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

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

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality

standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

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

§ 983.103 Inspecting units.

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

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

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

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

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

meeting this annual inspection requirement.

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

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

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in 24 CFR 982.404(b).)

(3) In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

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

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

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

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

This Subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This Subpart D does not apply to PBV assistance for existing housing. Housing selected under this subpart cannot be selected as existing housing, as defined in § 983.52, at a later date.

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

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required

by HUD headquarters (see § 982.162 of this chapter).

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

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

(i) Site;

(ii) Location of contract units on site;

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

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

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

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

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

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

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

§ 983.153 When Agreement is executed.

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

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

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

§ 983.154 Conduct of development work.

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

(b) *Labor standards.* (1) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.

(2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

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

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

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

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

list of parties excluded from federal procurement and nonprocurement programs.

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

§ 983.155 Completion of housing.

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

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

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

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

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

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

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

(A) HUD housing quality standards;

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

(C) Zoning;

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

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

§ 983.156 PHA acceptance of completed units.

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

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

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

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

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

Subpart E—Housing Assistance Payments Contract**§ 983.201 Applicability.**

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

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162).

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

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

§ 983.203 HAP contract information.

The HAP contract must specify:

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

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

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

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

(e) Utilities available to the contract units, including a specification of utility

services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(g) The HAP contract term;

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

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

§ 983.204 When HAP contract is executed.

(a) *PHA inspection of housing.* (1) Before execution of the HAP contract, the PHA must inspect each contract unit in accordance with § 983.103(b).

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

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

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

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

§ 983.205 Term of HAP contract.

(a) *Ten-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to ten years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than ten years.

(b) *Extension of term.* Within one year before expiration, the PHA may agree to extend the term of the HAP contract for an additional term of up to five years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are

subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

(c) *Termination by PHA—insufficient funding.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by the PHA in accordance with HUD instructions. For purposes of this section, "sufficient funding" means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

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

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

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

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

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of authorized budget authority

as provided in § 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.

(c) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

§ 983.207 Condition of contract units.

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

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

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

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

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under

the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

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

§ 983.208 Owner responsibilities.

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. 24 CFR 982.452 (Owner responsibilities) applies.

§ 983.209 Owner certification.

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

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

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

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

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

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

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

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

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

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

Subpart F—Occupancy

§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?*

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

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

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

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA'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. (However, the PHA 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 PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

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

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

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units)

or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

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

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

(6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.

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

(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

(1) *Preference limits.* (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

(ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and

(iii) For whom such services cannot be provided in a nonsegregated setting.

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

(3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

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

(2) If a PBV owner rejects a family for admission to the owner's PBV units,

such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

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

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

§ 983.252 PHA information for accepted family.

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

- (1) A description of how the program works; and
 - (2) Family and owner responsibilities.
- (b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:
- (1) How the PHA determines the total tenant payment for a family;
 - (2) Family obligations under the program; and
 - (3) Applicable fair housing information.

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

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

(d) *Providing information for persons with limited English proficiency.* The PHA 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.

§ 983.253 Leasing of contract units.

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

(2) The owner 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.

(3) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(b) *Size of unit.* The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.

§ 983.254 Vacancies.

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

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

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

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

§ 983.255 Tenant screening.

(a) *PHA option.* (1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening.

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

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

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

- (i) Payment of rent and utility bills;
- (ii) Caring for a unit and premises;
- (iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

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

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

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

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

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

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

(3) The PHA must give the family a description of the PHA policy on providing information to owners.

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

§ 983.256 Lease.

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

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

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

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

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

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

- (1) The names of the owner and the tenant;
 - (2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
 - (3) The term of the lease (initial term and any provision for renewal);
 - (4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
 - (5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
 - (6) The amount of any charges for food, furniture, or supportive services.
- (d) *Tenancy addendum.* (1) The tenancy addendum in the lease shall state:
- (i) The program tenancy requirements (as specified in this part);
 - (ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).
- (2) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.
- (e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of all such changes.
- (2) The owner must notify the PHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with § 983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.
- (f) *Initial term of lease.* The initial lease term must be for at least one year.
- (g) *Lease provisions governing tenant absence from the unit.* The lease may specify a maximum period of tenant absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination of assistance actions due to family absence from the unit is subject to 24 CFR 982.312, except that the HAP contract is not terminated if the family

is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction.

(a) In general, 24 CFR 982.310 applies with the exception that § 982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, "good cause" does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part.

(b) Upon lease expiration, an owner may:

- (1) Renew the lease;
- (2) Refuse to renew the lease for good cause as stated in paragraph (a) of this section;
- (3) Refuse to renew the lease without good cause, in which case the PHA would provide the family with a tenant-based voucher and the unit would be removed from the PBV HAP contract.

(c) If a family resides in a project-based unit excepted from the 25 percent per-building cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

§ 983.258 Security deposit: amounts owed by tenant.

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

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

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

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

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

any amount owed by the family to the owner.

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

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

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

(b) *PHA offer of continued assistance.*

(1) If a family is occupying a:

- (i) Wrong-size unit, or
- (ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

- (i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);
- (ii) Other project-based housing assistance (e.g., by occupancy of a public housing unit);
- (iii) Tenant-based rental assistance under the voucher program; or
- (iv) Other comparable public or private tenant-based assistance (e.g., under the HOME program).

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

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

§ 983.260 Family right to move.

(a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

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

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

(d) If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

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

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

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly or disabled families; or to families receiving supportive services.

(c) If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception (e.g., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family

that no longer qualifies for elderly or disabled family status) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with § 983.206(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

Subpart G—Rent to Owner**§ 983.301 Determining the rent to owner.**

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

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

(3) The rent to owner is redetermined at the owner's request for a rent increase in accordance with this section and § 983.302. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR in accordance with § 983.302.

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

(1) An amount determined by the PHA, 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;

(2) The reasonable rent; or

(3) The rent requested by the owner.

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

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 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.

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

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

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

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

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

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

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

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

(e) *Reasonable rent.* The PHA shall determine reasonable rent in accordance with § 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent.

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

(ii) *Redetermination of rent to owner.* When redetermining the rent to owner, the PHA shall use the most recently

published FMR and the PHA utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

(2) *Exception payment standard and PHA 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) The PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

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

§ 983.302 Redetermination of rent to owner.

(a) The PHA must redetermine the rent to owner:

(1) Upon the owner's request; or

(2) When there is a five percent or greater decrease in the published FMR in accordance with § 983.301.

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

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

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

(c) *Rent decrease.* If there is a decrease in the rent to owner, as

established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

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

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

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

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

§ 983.303 Reasonable rent.

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

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

(1) 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;

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

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

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

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

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

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

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

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

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

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

(e) *Owner certification of comparability.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

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

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

§ 983.304 Other subsidy: effect on rent to owner.

(a) *General.* In addition to the rent limits established in accordance with § 983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

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

(c) *Subsidized projects.* (1) This paragraph (c) 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.

(2) 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 listed in paragraph (c)(1) of this section.

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

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

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

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

In addition to the limitation to 110 percent of the FMR in § 983.301(b)(1), the rent reasonableness limit under §§ 983.301(b)(2) and 983.303, the rental determination provisions of § 983.301(f), the special limitations for tax credit units under § 983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

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

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

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance

payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

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

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

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

§ 983.352 Vacancy payment.

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

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

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

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

(i) The owner gives the PHA 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 the PHA to verify that the owner is entitled to the vacancy payment.

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

§ 983.353 Tenant rent; payment to owner.

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

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

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

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

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

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

(c) *Limit of PHA responsibility.* (1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

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

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

(2) The PHA either may pay the utility reimbursement to the family or may pay

the utility bill directly to the utility supplier on behalf of the family.

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

§ 983.354 Other fees and charges.

(a) *Meals and supportive services.* (1) Except as provided in paragraph (a)(2) 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.

(2) 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.

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

Dated: September 29, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 05-20035 Filed 10-12-05; 8:45 am]

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**U.S. Department Of Housing and Urban Development
Office of Public and Indian Housing**

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT
EXISTING HOUSING**

PART 1 OF HAP CONTRACT

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

1. CONTRACT INFORMATION

a. Parties

This housing assistance payments (HAP) contract is entered into between:

_____ (PHA) and

_____ (owner).

b. Contents of contract

The HAP contract consists of Part 1, Part 2 and the contract exhibits listed in paragraph c.

c. Contract exhibits

The HAP contract includes the following exhibits:

EXHIBIT A: TOTAL NUMBER OF UNITS IN PROJECT COVERED BY THIS HAP CONTRACT; INITIAL RENT TO OWNER; AND THE NUMBER AND DESCRIPTION OF THE CONTRACT UNITS. (See 24 CFR 983.203 for required items.)

**Project-based Voucher Program
HAP Contract for Existing Housing**

Previous editions are obsolete

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APPENDIX C

EXHIBIT B: SERVICES, MAINTENANCE AND EQUIPMENT TO BE PROVIDED BY THE OWNER WITHOUT CHARGES IN ADDITION TO RENT TO OWNER

EXHIBIT C: UTILITIES AVAILABLE IN THE CONTRACT UNITS, INCLUDING A LISTING OF UTILITY SERVICES TO BE PAID BY THE OWNER (WITHOUT CHARGES IN ADDITION TO RENT TO OWNER) AND UTILITIES TO BE PAID BY THE TENANTS

EXHIBIT D: FEATURES PROVIDED TO COMPLY WITH PROGRAM ACCESSIBILITY FEATURES OF SECTION 504 OF THE REHABILITATION ACT OF 1973

ADDITIONAL EXHIBITS

d. Effective date and term of HAP contract

1. Effective date

a. The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the housing quality standards.

b. For all contract units, the effective date of the HAP contract is:

_____.

c. The term of the HAP contract begins on the effective date.

2. Length of initial term

a. Subject to paragraph 2.b, the initial term of the HAP contract for all contract units is: _____.

b. The initial term of the HAP contract may not be less than one year, nor more than fifteen years.

3. Extension of term

The PHA and owner may agree to enter into an extension of the HAP contract at

the time of initial HAP contract execution or any time prior to expiration of the contract. Any extension, including the term of such extension, must be in accordance with HUD requirements. A PHA must determine that any extension is appropriate to achieve long-term affordability of the housing or expand housing opportunities.

4. Requirement for sufficient appropriated funding

a. The length of the initial term and any extension term shall be subject to availability, as determined by HUD, or by the PHA in accordance with HUD requirements, of sufficient appropriated funding (budget authority), as provided in appropriations acts and in the PHA's annual contributions contract (ACC) with HUD, to make full payment of housing assistance payments due to the owner for any contract year in accordance with the HAP contract.

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

e. Occupancy and payment

1. Payment for occupied unit

During the term of the HAP contract, the PHA shall make housing assistance payments to the owner for the months during which a contract unit is leased to and occupied by an eligible family. If an assisted family moves out of a contract unit, the owner may keep the housing assistance payment for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

2. Vacancy payment

THE PHA HAS DISCRETION WHETHER TO INCLUDE THE VACANCY PAYMENT PROVISION (PARAGRAPH e.2), OR TO STRIKE THIS PROVISION FROM THE HAP CONTRACT FORM.

a. If an assisted family moves out of a contract unit, the PHA may provide vacancy

payments to the owner for a PHA-determined vacancy period 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 the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may only cover the period the unit remains vacant.
- c. The PHA may only make vacancy payments to the owner if:
 - 1. The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and the date when the family moved out (to the best of the owner's knowledge and belief);
 - 2. 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;
 - 3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
 - 4. The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.
- d. The PHA must take every reasonable action to minimize the likelihood and length of vacancy.
- e. The owner may refer families to the PHA, and recommend selection of such families from the PHA waiting list for occupancy of vacant units.
- f. The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payments.

3. PHA is not responsible for family damage or debt to owner

Except as provided in this paragraph e (Occupancy and Payment), the PHA will not make any other payment to the owner under the HAP contract. The PHA will not make any payment to owner for any damages to the unit, or for any other

amounts owed by a family under the family's lease.

f. Income-mixing requirement

1. Except as provided in paragraphs f.2 and 3, the PHA will not make housing assistance payments under the HAP contract for more than 25 percent of the total number of dwelling units (assisted or unassisted) in any project. The term "project" means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land assisted under this HAP contract.
 2. The limitation in paragraph f.1 does not apply to single-family buildings.
 3. In referring eligible families to the owner for admission to the number of contract units in any project exceeding the 25 percent limitation under paragraph f.1, the PHA shall give preference to elderly or disabled families, or to families receiving supportive services, for the number of contract units designated for occupancy by such families. The owner shall rent the designated number of contract units to such families referred by the PHA from the PHA waiting list.
 4. The PHA and owner must comply with all HUD requirements regarding income mixing.
 5. The following specifies the number of contract units (if any):
 - a. Designated for occupancy by disabled families;
 - b. Designated for occupancy by elderly families;
 - c. Designated for occupancy by elderly or disabled families; or
 - d. Designated for occupancy by families receiving supportive services.
- Check this box if any contract units are designated for disabled families.

The following number of contract units shall be rented to disabled families: _____.

- Check this box if any contract units are designated for elderly families.

The following number of contract units shall be rented to elderly families:

_____.

- Check this box if any contract units are designated for elderly or disabled families.

The following number of contract units shall be rented to elderly or disabled families:

_____.

- Check this box if any contract units are designated for families receiving supportive services.

The following number of contract units shall be rented to families

receiving supportive services: _____.

EXECUTION OF HAP CONTRACT FOR EXISTING HOUSING

PUBLIC HOUSING AGENCY (PHA) Name of PHA (Print)
By: Signature of authorized representative
Name and official title (Print)
Date
OWNER Name of Owner (Print)
By: Signature of authorized representative
Name and title (Print)
Date

**U.S. Department Of Housing and Urban Development
Office of Public and Indian Housing**

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT
EXISTING HOUSING**

PART 2 OF HAP CONTRACT

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2. DEFINITIONS

Contract units. The housing units covered by this HAP contract. The contract units are described in Exhibit A.

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

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

HAP contract. This housing assistance payments contract between the PHA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in section 1.c of the HAP contract).

Housing assistance payment. The monthly assistance payment by the PHA for a contract unit, which includes: (1) a payment to the owner for rent to the owner under the family's lease minus the tenant rent; and (2) an additional payment to or on behalf of the family if the utility allowance exceeds total tenant payment.

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

Housing quality standards (HQS). The HUD minimum quality standards for dwelling units occupied by families receiving project-based voucher program assistance.

HUD. U.S. Department of Housing and Urban Development.

HUD requirements. HUD requirements which apply to the project-based voucher program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

Owner. Any person or entity who has the legal right to lease or sublease a unit to a participant.

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

Principal or interested party. This term includes a management agent and other persons or entities participating in project management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract, or in any proceeds or benefits arising from the HAP contract.

Program. The project-based voucher program (see authorization for project-based assistance at 42 U.S.C. 1437f(o)(13)).

PHA. Public Housing Agency. The agency that has entered into the HAP contract with the owner. The agency is a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

Proposal selection date. The date the PHA gives written notice of proposal selection to the owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

Rent to owner. The total monthly rent payable to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

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

Tenant rent. The portion of the rent to owner payable by the family, as determined by the PHA in accordance with HUD requirements. The PHA is not responsible for paying any part of the tenant rent.

3. PURPOSE

- a. This is a HAP contract between the PHA and the owner.

- b. The purpose of the HAP contract is to provide housing assistance payments for eligible families who lease contract units that comply with the HUD HQS from the owner.
- c. The PHA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term. HUD provides funds to the PHA to make housing assistance payments to owners for eligible families.

4. RENT TO OWNER; HOUSING ASSISTANCE PAYMENTS

a. Amount of initial rent to owner

The initial rent to owner for each contract unit is stated in Exhibit A, which is attached to and made a part of the HAP contract. At the beginning of the HAP contract term, and until rent to owner is adjusted in accordance with section 5 of the HAP contract, the rent to owner for each bedroom size (number of bedrooms) shall be the initial rent to owner amount listed in Exhibit A.

b. HUD rent requirements

Notwithstanding any other provision of the HAP contract, the rent to owner may in no event exceed the amount authorized in accordance with HUD requirements. The PHA has the right to reduce the rent to owner, at any time, to correct any errors in establishing or adjusting the rent to owner in accordance with HUD requirements. The PHA may recover any overpayment from the owner.

c. PHA payment to owner

1. Each month the PHA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in accordance with the HAP contract.
2. The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the rent to owner exceeds the tenant rent.
3. Payment of the tenant rent is the responsibility of the family. The PHA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The PHA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.

4. The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.
5. 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.
6. If the PHA determines that the owner is not entitled to the payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
7. The owner will notify the PHA promptly of any change of circumstances that would affect the amount of the monthly housing assistance payment, and will return any payment that does not conform to the changed circumstances.

d. Termination of assistance for family

The PHA may terminate housing assistance for a family under the HAP contract in accordance with HUD requirements. The PHA must notify the owner in writing of its decision to terminate housing assistance for the family in such case.

5. ADJUSTMENT OF RENT TO OWNER

a. PHA determination of adjusted rent

1. At each annual anniversary during the term of the HAP contract, the PHA shall adjust the amount of rent to owner, upon request to the PHA by the owner, in accordance with law and HUD requirements. In addition, the PHA shall adjust the rent to owner when there is a five percent or greater decrease in the published, applicable Fair Market Rent in accordance with 24 CFR 983.302.
2. The adjustment of rent to owner shall always be determined in accordance with all HUD requirements. The amount of the rent to owner may be adjusted up or down, in the amount defined by the PHA in accordance with HUD requirements.

b. Reasonable rent

The rent to owner for each contract unit, as adjusted by the PHA in accordance with 24 CFR 983.303, may at no time exceed the reasonable rent charged for comparable units in the private unassisted market. The reasonable rent shall be determined by the PHA in accordance with HUD requirements.

c. No special adjustments

The PHA will not make any special adjustments of the rent to owner.

d. Owner compliance with HAP contract

The PHA shall not approve, and the owner shall not receive, any increase of rent to owner unless all contract units are in accordance with the HQS, and the owner has complied with the terms of the assisted leases and the HAP contract.

e. Notice of rent adjustment

Rent to owner shall be adjusted by written notice by the PHA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

6. OWNER RESPONSIBILITY

The owner is responsible for:

- a. Performing all management and rental functions for the contract units.
- b. Maintaining the units in accordance with HQS.
- c. Complying with equal opportunity requirements.
- d. Enforcing tenant obligations under the lease.
- e. Paying for utilities and housing services (unless paid by the family under the lease).
- f. Collecting from the tenant:
 1. Any security deposit;

2. The tenant rent; and
3. Any charge for unit damage by the family.

7. OWNER CERTIFICATION

The owner certifies that at all times during the term of the HAP contract:

- a. All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
- b. The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- c. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.
- d. To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- e. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f. The amount of the housing assistance payment is the correct amount due under the HAP contract.
- g. The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- h. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
- i. The family does not own, or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.

8. CONDITION OF UNITS

a. Owner maintenance and operation

The owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance and utilities set forth in Exhibits B and C, and in the lease with each assisted family.

b. PHA inspections

1. The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.
2. Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.
3. At least annually during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph 2 of this section are not counted towards meeting this annual inspection requirement.
4. If more than 20 percent of the annual sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.
5. The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information that comes to its attention in scheduling inspections.

c. Violation of the housing quality standards

1. If the PHA determines a contract unit is not in accordance with the HQS, the PHA may exercise any of its remedies under the HAP contract for all

or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.

2. The PHA may exercise any such contractual remedy respecting a contract unit even if the family continues to occupy the unit.
3. The PHA shall not make any housing assistance for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

d. Maintenance and replacement—owner’s standard practice

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

9. LEASING CONTRACT UNITS

a. Selection of tenants

1. During the term of the HAP contract, the owner must lease all contract units to eligible families selected and referred by the PHA from the PHA waiting list. (See 24 CFR 983.251.)
2. 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.
3. Consistent with HUD requirements, the owner may apply its own admission procedures in determining whether to admit a family referred by the PHA for occupancy of a contract unit. The owner may refer families to the PHA, and recommend selection of such families from the PHA waiting list for occupancy of vacant units.
4. The owner must promptly notify in writing any rejected applicant of the grounds for rejection.
5. The PHA must determine family eligibility in accordance with HUD

requirements.

6. The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.
7. If a contract unit was occupied by an eligible family at the time the unit was selected by the PHA, or is so occupied on the effective date of the HAP contract, the owner must offer the family the opportunity to lease the same or another appropriately-sized contract unit with assistance under the HAP contract.
8. The owner is responsible for screening and selecting tenants from the families referred by the PHA from its waiting list.

b. Vacancies

1. The owner must promptly notify the PHA of any vacancy in a contract unit. After receiving the owner notice, the PHA shall make every reasonable effort to refer a sufficient number of families for owner to fill the vacancy.
2. The owner must rent vacant contract units to eligible families on the PHA waiting list referred by the PHA.
3. The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.
4. If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA to fill such vacancies), the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

10. TENANCY

a. Lease

The lease between the owner and each assisted family must be in accordance with HUD requirements. In all cases, the lease must include the HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

b. Termination of tenancy

1. The owner may only terminate a tenancy in accordance with the lease and HUD requirements.
2. The owner must give the PHA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

c. Family payment

1. The portion of the monthly rent to owner payable by the family (“tenant rent”) will be determined by the PHA in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.
2. The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
3. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess rent payment to the tenant.
4. The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.
5. The PHA is only responsible for making the housing assistance payments to the owner on behalf of the family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or any other claim by the owner.

d. Other owner charges

1. Except as provided in paragraph 2, the owner may not require the tenant or

family members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.

2. In assisted living developments receiving project-based voucher 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.
3. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenant in the premises.

e. Security deposit

1. The owner may collect a security deposit from the family.
2. The owner must comply with HUD and PHA requirements, which may change from time to time, regarding security deposits from a tenant.
3. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted families.
4. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
5. If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the family. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

11. FAMILY RIGHT TO MOVE

- a. The family may terminate its lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for tenant-based rental assistance in accordance with HUD requirements.
- b. Before providing notice to terminate the lease under paragraph a, the family must first contact the PHA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available upon lease termination, the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance.

12. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS

The PHA subsidy standards determine the appropriate unit size for the family size and composition. The PHA and owner must comply with the requirements in 24 CFR 983.259.

13. PROHIBITION OF DISCRIMINATION

- a. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.
- b. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as

amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

- c. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

14. PHA DEFAULT AND HUD REMEDIES

If HUD determines that the PHA has failed to comply with the HAP contract, or has failed to take appropriate action to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under the HAP contract, HUD may assume the PHA's rights and obligations under the HAP contract, and may perform the obligations and enforce the rights of the PHA under the HAP contract.

15. OWNER DEFAULT AND PHA REMEDIES

a. Owner default

Any of the following is a default by the owner under the HAP contract:

1. The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the housing quality standards.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the HAP contract.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
 - A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
 - B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

b. PHA remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the HAP contract.
2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the HAP contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP contract.

c. PHA remedy is not waived

The PHA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

16. ~~REQUIRED BY HUD FROM THE~~ INFORMATION AND ACCESS

a. Required information

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the

PHA or HUD.

b. PHA and HUD access to premises

The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

17. PHA AND OWNER RELATION TO THIRD PARTIES

a. Injury because of owner action or failure to act

The PHA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

b. Legal relationship

The owner is not the agent of the PHA. The HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

c. Exclusion of third party claims

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

d. Exclusion of owner claims against HUD

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

18. PHA-OWNED UNITS

Notwithstanding Section 17 of this HAP contract, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

19. CONFLICT OF INTEREST

a. Interest of members, officers, or employees of PHA, members of local governing body, or other public officials

1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, or in the HAP contract.
2. HUD may waive this provision for good cause.

b. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the HAP contract. The owner must fully and promptly update such disclosures.

c. Interest of member of or delegate to Congress

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of this HAP Contract or to any benefits arising from the contract.

20. EXCLUSION FROM FEDERAL PROGRAMS

a. Federal requirements

The owner must comply with and is subject to requirements of 2 CFR part 2424.

b. Disclosure

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

21. TRANSFER OF THE CONTRACT OR PROPERTY

a. When consent is required

1. The owner agrees that neither the HAP contract nor the property may be transferred without the advance written consent of the PHA in accordance with HUD requirements.
2. "Transfer" includes:
 - A. Any sale or assignment or other transfer of ownership, in any form, of the HAP contract or the property;
 - B. The transfer of any right to receive housing assistance payments that may be payable pursuant to the HAP contract;
 - C. The creation of a security interest in the HAP contract or the property;
 - D. Foreclosure or other execution on a security interest; or
 - E. A creditor's lien, or transfer in bankruptcy.
3. If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the PHA pursuant to paragraph a for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph a for transfer of any interest of a general partner.

b Transferee assumption of HAP contract

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the PHA has consented in advance, in writing to such transfer, and the transferee has agreed in writing, in a form acceptable to the PHA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

c. Effect of consent to transfer

1. The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
2. The PHA's consent to transfer of the HAP contract or the property does not change the terms of the HAP contract in any way, and does not change the rights or obligations of the PHA or the owner under the HAP contract.
3. The PHA's consent to transfer of the HAP contract or the property to any transferee does not constitute consent to any further transfers of the HAP contract or the property, including further transfers to any successors or assigns of an approved transferee.

d. When transfer is prohibited

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

~~22. SUBSIDY LAYERING~~ required for existing housing projects.

23. OWNER LOBBYING CERTIFICATIONS

- a. The owner certifies, to the best of owner's knowledge and belief, that:
1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
 2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

24. TERMINATION OF HAP CONTRACT FOR WRONGFUL SELECTION OF CONTRACT UNITS

The HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

25. NOTICES AND OWNER CERTIFICATIONS

- a. Where the owner is required to give any notice to the PHA pursuant to the HAP contract or any other provision of law, such notice must be in writing and must be given in the form and manner required by the PHA.
- b. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

26. ENTIRE AGREEMENT; INTERPRETATION

- a. The HAP contract, including the exhibits, is the entire agreement between the PHA and the owner.

- b. The HAP contract must be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements.

**U.S. Department Of Housing And Urban Development
Office of Public and Indian Housing**

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV AGREEMENT TO ENTER INTO
HOUSING ASSISTANCE PAYMENTS CONTRACT**

NEW CONSTRUCTION OR REHABILITATION

PART I

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

1.1 Parties

This Agreement to Enter into Housing Assistance Payments Contract (“Agreement”) is entered into between:

_____ (“PHA”) and

_____ (“owner”).

1.2 Purpose

The owner agrees to develop the Housing Assistance Payments Contract (“HAP contract”) units to in accordance with Exhibit B to comply with Housing Quality Standards (“HQS”), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner of the contract units.

1.3 Contents of Agreement

This Agreement consists of Part I, Part II and the following Exhibits:

EXHIBIT A: The approved owner’s PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- location of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- 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.
- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

1.4 Significant Dates

- A. Effective Date of the Agreement: The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until any required subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.
- B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will have separate effective dates for each stage.

Single-stage project

- i. Effective Date for all contract units: _____
- ii. Date of Commencement of the Work: The date for commencement of work is not later than _____ calendar days after the effective date of this Agreement.
- iii. Time for Completion of Work: The date for completion of the work is not later than _____ calendar days after the effective date of this Agreement.

Multi-Stage Project

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK

1.5 Nature of the Work

- This Agreement is for **New Construction** of units to be assisted by the project-based voucher program.
- This Agreement is for **Rehabilitation** of units to be assisted by the project-based voucher program.

1.6 Schedule of Completion

- A. **Timely Performance of Work:** The owner agrees to begin work no later than the date for commencement of work as stated in section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. **Time for Completion:** All work must be completed no later than the end of the period stated in section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in section 1.4.
- C. **Delays:** If there is a delay in the completion due to unforeseen factors beyond the owner's control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

1.7 Changes in Work

- A. The owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner as determined by PHA in accordance with HUD requirements.
- B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner as determined by the PHA in accordance with HUD requirements.
- C. The PHA may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

1.8 Work Completion

- A. Conformance with Exhibit B: The work must be completed in accordance with Exhibit B. The owner is solely responsible for completion of the work.
- B. Evidence of Completion: When the work is completed, the owner must provide the PHA with the following:
1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.
 2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)
 3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, the owner may be required to submit additional documentation as evidence of completion of the housing. Check the following that apply:
 - A certificate of occupancy or other evidence that the contract units comply with local requirements.
 - An architect or developer's certification that the housing complies with:
 - the HQS;
 - State, local or other building codes;
 - Zoning;
 - The rehabilitation work write-up for rehabilitated housing;
 - The work description for newly constructed housing; or
 - Any additional design or quality requirements pursuant to this Agreement.

1.9 Inspection and Acceptance by the PHA of Completed Contract Units

- A. Completion of Contract Units: Upon receipt of owner notice of completion of contract units, the PHA shall take the following steps:
 - 1. Review all evidence of completion submitted by owner.
 - 2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.
- B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract at this point. However, work deficiencies may be corrected in accordance with Section 1.10 of this Agreement.
- C. Acceptance: If the PHA determines that the work has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

1.10 Acceptance Where Work Deficiencies Exist

- A. If the PHA determines that work deficiencies exist, the PHA shall determine whether and to what extent the deficiencies are correctable, whether the units will be accepted after correction of the deficiencies, and the requirements and procedures (consistent with HUD requirements) for such correction and acceptance of contract units. The PHA shall notify the owner of the PHA's decision.
- B. Completion in Stages: When the units will be completed in stages, the procedures of this section shall apply to each stage.

1.11 Execution of HAP Contract

- A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.

- B. **Completion in Stages:** When the units will be completed in stages, the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in the HAP contract for each stage. Upon acceptance of the first stage, the owner shall execute the HAP contract and the signature block provided in the HAP contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the HAP contract for such stage.
- C. **Form of HAP contract:** The terms of the HAP contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the HAP contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the HAP contract shall be completed by the PHA.
- D. **Survival of Owner Obligations:** Even after execution of the HAP contract, the owner shall continue to be bound by all owner obligations under the Agreement.

1.12 Initial Determination of Rents

- A. The estimated initial rent to owner shall be established in Exhibit C of this Agreement.
- B. The initial rent to owner is established at the beginning of the HAP contract term.
- C. The estimated and initial contract rents for each unit may in no event exceed the amount authorized in accordance with HUD requirements. Where the estimated or the initial rent to owner exceeds the amount authorized under HUD requirements, the PHA shall establish a lower estimated or initial rent to owner (as applicable), in accordance with HUD requirements.

1.13 Uniform Relocation Act

- A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.
- B. 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. Payment of relocation assistance must be in accordance with HUD requirements.

- C The acquisition of real property for a project to be assisted under the project-based voucher program is subject to the URA and 49 CFR part 24, subpart B.
- D The PHA must require the owner to comply with the URA and 49 CFR part 24.
- E In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

1.14 Protection of In-Place Families

- A In order to minimize displacement of in-place families, if a unit to be placed under HAP contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list (if it 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 unit in the project.
- B This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.
- C The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.
- D Assistance to in-place families may only be provided in accordance with HUD requirements.

1.15 Termination of Agreement and HAP Contract

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

1.16 Rights of HUD if PHA Defaults Under Agreement

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD’s satisfaction or as directed by HUD, for enforcement of the PHA’s rights under this Agreement, HUD may assume the PHA’s rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in

default, pay annual contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

1.17 Owner Default and PHA Remedies

A. Owner Default

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
 - A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
 - B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

B. PHA Remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.

2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the Agreement include, but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

C. PHA Remedy is not Waived

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

1.18 PHA and Owner Relation to Third Parties

A. Selection and Performance of Contractor

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.
2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

- B. Injury Resulting from Work under the Agreement: The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the owner, or any contractor, subcontractor or supplier.

- C. Legal Relationship: The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.
- D. Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the HAP contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the HAP contract.
- E. Exclusion of Owner Claims against HUD: Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

1.19 PHA-Owned Units

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

1.20 Conflict of Interest

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials
 - 1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.
 - 2. HUD may waive this provision for good cause.
- B. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

1.21 Interest of Member or Delegate to Congress

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of the Agreement or HAP contract or to any benefits arising from the Agreement or HAP contract.

1.22 Transfer of the Agreement, HAP Contract or Property

A. PHA Consent to Transfer

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

B. Procedure for PHA Acceptance of Transferee

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

C. When Transfer is Prohibited

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

1.23 Exclusion from Federal Programs

A. Federal Requirements

The owner must comply with and is subject to requirements of 2 CFR part 2424.

B. Disclosure

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

1.24 Lobbying Certifications

A. The owner certifies, to the best of owner's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

1.25 Subsidy Layering

A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

1.26 Prohibition of Discrimination

A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

B. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–

1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

- C. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

1.27 PHA and HUD Access to Premises and Owner Records

- A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.
- B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the Agreement.

1.28 Notices and Owner Certifications

- A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.
- B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

1.29 HUD Requirements

- A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements
- B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, Federal Register notices or other binding program directives.

1.30 Applicability of Part II provisions – Check all that apply

- Training, Employment and Contracting Opportunities
Section 2.1 applies if the total of the contract rents for all units under the proposed HAP contract, over the maximum term of the contract, is more than \$200,000.
- Equal Employment Opportunity
Section 2.2 only applies to construction contracts of more than \$10,000.
- Labor Standards Requirements
Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.
- Flood Insurance
Section 2.11 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

EXECUTION OF THE AGREEMENT

PUBLIC HOUSING AGENCY

Name (Print) _____

By: _____
Signature of Authorized Representative

Official title (Print): _____

Date: _____

OWNER

Name (Print) _____

By: _____
Signature of Authorized Representative

Official Title (Print): _____

Date: _____

**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV AGREEMENT TO ENTER INTO
HOUSING ASSISTANCE PAYMENTS CONTRACT**

NEW CONSTRUCTION OR REHABILITATION

PART II

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

2.1 Training, Employment and Contracting Opportunities

- (a) The project assisted under this Agreement is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR part 135 and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. This shall be a condition of the Federal financial assistance provided to the project, binding upon the owner, the owner's contractors and subcontractors, successors and assigns. Failure to fulfill these requirements shall subject the owner, the owner's contractors and subcontractors, successors and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR part 135.
- (b) The owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$100,000 the following clause:
 - (1) The work to be performed under this contract is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- (2) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, and shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (4) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (6) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible:
 - (i) preference and opportunities for training and employment shall be given to

Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

2.2 EQUAL EMPLOYMENT OPPORTUNITY

- (a) The owner shall incorporate or cause to be incorporated into any contract in excess of \$10,000 for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is to be performed pursuant to this Agreement, the following nondiscrimination clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the labor union or workers representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.
 - (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imported and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
 - (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
- (b) The owner agrees to be bound by the above nondiscrimination clause with respect to his or her own employment practices when participating in federally assisted construction work.
 - (c) The owner agrees to assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the nondiscrimination clause and the rules, regulations, and relevant orders of the Secretary of Labor, to furnish HUD and the Secretary of Labor such information

as they may require for the supervision of such compliance, and to otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

- (d) The owner further agrees to refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the nondiscrimination clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to the Executive Order. In addition, if the owner fails or refuses to comply with these undertakings, HUD may take any or all of the following actions; cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the owner, and refer the case to the Department of Justice for appropriate legal proceedings.

2.3 RESERVED

2.4 HUD-FEDERAL LABOR STANDARDS PROVISIONS

The owner is responsible for inserting the entire text of section 2.4 of this Agreement in all construction contracts and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 2.4. (Note: Sections 2.4(b) and (c) apply only when the amount of the prime contract exceeds \$100,000.)

(a)(1)(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within the 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinations or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such

violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.

(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4)(i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary

employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee

rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3 which are incorporated by reference in this Agreement.

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 2.4(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 2.4(a).

(7) Contract Terminations; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.

(10)(i) Certification of Eligibility. By entering into this Agreement, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, section 1010, Title 18, U.S.C., "Federal Housing Administration transactions, provides in part: "Whoever, for the purpose of ...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Agreement to his employer.

(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The contractor shall comply with all regulations issue by the Secretary of Labor pursuant to Title 29 part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 *et seq.*
- (3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and

Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

2.5-2.7 RESERVED

2.8 WAGE AND CLAIMS ADJUSTMENTS

The owner shall be responsible for the correction of all violations under section 2.4, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 2.4. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.4.

2.9 RESERVED

2.10 EVIDENCE OF UNIT(S) COMPLETION; ESCROW

(a) The owner shall evidence the completion of the unit(s) by furnishing the PHA, in addition to the requirements listed in Part I of this Agreement, a certification of compliance with the provisions of sections 2.4 and 2.8 of this Agreement, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner, the PHA, or HUD, the owner will place a sufficient amount in escrow, as directed by the PHA or HUD, to assure such payments.

(b) The escrows required under this section and section 2.8 of shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.

2.11 FLOOD INSURANCE

If the project is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Program, the owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing statutory requirement to maintain such flood insurance during the life of the property.

Minimum Evaluation Criteria Certification

Offeror's Name: _____

By signing this document, I certify that:

1. This proposal includes all information specified in Section 4 entitled "Proposal Format and Content;" **and**
2. The undersigned further certifies under the penalties of perjury that this Proposal is in all respects bona fide, fair, and made without collusion or fraud with any other person. The undersigned further certifies under the penalty of perjury that the undersigned is not debarred from doing public work under the provisions of any state and/or federal rule or regulation. As used in this certification the word "person" shall mean natural person, joint venture, partnership, corporation, or other business or legal entity.

Offeror's Signature

Date

**Certifications and
Representations
of Offerors
Non-Construction Contract**

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offers to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) has, has not employed or retained any person or company to solicit or obtain this contract; and
- (2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- Black Americans Asian Pacific Americans
- Hispanic Americans Asian Indian Americans
- Native Americans Hasidic Jewish Americans

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

- (iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.
- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:
- (i) Award of the contract may result in an unfair competitive advantage;
 - (ii) The Contractor's objectivity in performing the contract work may be impaired; or
 - (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.
- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.
- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

CORPORATE CERTIFICATION

(For Use when Proposer is a Corporation)

I, _____, certify that I am the Secretary of the corporation named as Contractor in the foregoing proposal; that _____, who signed this proposal on behalf of the Contractor was then _____ of said corporation; that said proposal was duly signed for and on behalf of said corporation by authority of its Board of Directors; and is within the scope of its corporate powers; and that said corporation is organized under the laws of the State of _____.

This _____ day of _____, 20_____.

(Corporation)

(Secretary)

(Corporate Seal)

PARTNERSHIP CERTIFICATE

STATE OF _____

COUNTY OF _____

On this ____ day of _____, _____, before me personally appeared _____

known to me to be the person who executed the above instrument, and who, being duly sworn, did depose and say that he/she is a general partner in the Firm of _____

and that said firm consists of Affiant and _____

and that Affiant executed the foregoing instrument on behalf of said Contractor for the uses and purposes stated therein, and that no one except the above-named members of the Contractor have any financial interest whatsoever in said proposed contract.

(Affiant)

Sworn and subscribed to before me, this ____ day of _____, _____.

Notary Public

My Commission Expires: _____

NONCOLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

KNOW ALL MEN BY THESE PRESENT THAT I, _____
(name of affiant)

on oath depose and say:

That I am an owner or officer of the company filing this proposal or bid with the Housing Authority of the County of DeKalb and with which this affidavit is being submitted;

That such proposal or bid is genuine and not collusive or sham;

That said proposer or bidder nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this Affiant, has in anyway colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, bidder, Contractor, or person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from offering indirectly, sought by agreement, or collusion, or communication, or conference with other offerors, Contractors, or persons to fix the price or prices or cost element of the proposal price or the proposal price of any other offer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the Housing Authority of the County of DeKalb or any person interested in the proposed contract; and

That all statements in said proposal or bid are true.

The undersigned certifies under penalty of perjury that this proposal is in all respects bona fide, the price or prices quoted in the attached proposal are fair and proper and made without collusion or fraud with any other person, collusion, conspiracy, connivance, or unlawful agreement on the part of the Offeror or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

As used in this document the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

Signature of Affiant _____ Date _____

Title With Company _____

Sworn and subscribed to before me this __ day of _____, _____.

Notary Public _____

Commission Expires _____

Number of Bedrooms	Voucher Payment Standard
0	\$615
1	\$730
2	\$965
3	\$1,300
4	\$1,465
5	\$1,700
6	\$1,975

APPENDIX J

FREQUENTLY ASKED QUESTIONS

GENERAL INFORMATION AND CLARIFICATIONS

HUD forms can be found at http://www.hud.gov/offices/adm/handbks_forms/index.cfm or <http://hud.gov/offices/adm/hudclips/forms/>. Some made be in only PDF or Word format and some may be in both.

An official HQS inspection is done initially before move-in and then annually.

Each property will be rated independently; however, submit one proposal clearly explaining/documenting each property.

A Project-Based Voucher (PBV) is mobile only to another identical unit at the property.

A tenant family in good standing can get a regular mobile voucher to move anywhere after a year. If they have been evicted or owe money or had damages, they would not be eligible for mobile voucher.

A vacant unit can receive subsidy for up to 2 months as long as the owner/landlord is actively marketing and/or repairing to re-occupy the unit.

The HACD will keep the Waiting List for the property.

FREQUENTLY ASKED QUESTIONS

Question: XYZ Organization intends to apply for funds through several sources for the new construction of 20 units of housing for individuals and families who are formerly homeless. We have a land possibility in mind but we will not know if the land is feasible for the project before the RFP for project based vouchers is due. Is it possible to apply for the vouchers with a full description of the proposed units without a firm address?

Answer: HACD can evaluate without a street address, but we would need a definite legal description of the property and know which zip code would apply for evaluation purposes. We cannot evaluate just a plan, since the property is actually being evaluated as a part of the proposal. If you have more than one property in mind, you may submit information on each property and specify whether you are interested in vouchers for any and all properties if possible, or explain that it is an "either/or" situation depending upon the outcome of your property procurement endeavors.

Question: Is the cost of utilities to be backed into the numbers or do they pay their own utilities?

Answer: Either. The landlord can include the utilities in the rent price or use the utility allowance to back out this amount, and the tenant will pay the utility(ies).

Question: Please clarify what is required for the Environmental Review and what HACD will accept. Does it have to be with the proposal or can it be later?

Answer: It does not have to be done and submitted with the proposal or by the proposal deadline. See page 16 of 38 in CFR Title 14, Part 983 (Appendix B), Subsection 983.58 Environmental Review for HUD regulations.

Question: Is there a limit to only 25% of the property having PBV?

Answer: Yes, there is a limit of 25% unless the units are targeted to elderly or disabled or have required Family Self-Sufficiency (FSS) services attached. The 25% limit does not apply to single-family homes; only multifamily dwelling units. There can be regular market-rate units and units utilizing regular Section 8 vouchers at the same site.

Question: Can the proposed property just be in the planning stages at this point - construction not even begun?

Answer: Yes, it can be in the planning stages.

Question: The owner of a small complex that our group is acquiring cannot complete the sale until January due to restrictions from their funding source. However, they have signed an agreement turning over site control to our team for the purpose of management and renovating the property until the sale can be completed. Who should sign the ownership forms and submit the proposal? Should it be the current owner or our team since we have site control and a contract for sale?

Answer: Whoever has ownership would be the one to apply. If ownership changes after the contract is awarded, HACD would do an addendum to that contract to remove the previous owner and add the new.

Question: Is there any restriction on my selling the property after a lease up period? This would, of course, assume that the buyer maintains the same standards that are required by HACD for the vouchers to be granted and for them to stay in place. If the property were sold to another entity five years from now, would the vouchers also be conveyed with the ownership or would a new voucher agreement be required?

Answer: You could sell the property after award/contract and the vouchers would remain with the property and transfer to the new owner. HACD would complete an addendum to the contract to change ownership as stated above.

Question: Can one voluntarily withdraw from the Project Based Voucher Program at some point in the future if we were to be approved?

Answer: Yes, in accordance with provisions of the AHAP/HAP contracts.