

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

Part X: Payments by Owner to BHA. This part describes the fees assessed by BHA.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5, FR Notice 1/18/17, PIH 2017-21]

The project-based voucher (PBV) program allows PHAs that already administer the Housing Choice voucher program, also known as “tenant-based voucher program,” under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific Project-based units rather than using it for tenant-based assistance [24 CFR 983.6]. The Housing Opportunity Through Modernization Act of 2016 (HOTMA) allows PHA’s to Project-base an additional 10% of its authorized units (total of 30%) if those units fall into an “excepted” category (homeless; veterans; elderly or disabled households receiving supportive services; units in a census tract with a poverty rate of 20% or less). PHAs may only operate a PBV program if doing so is consistent with the PHA’s Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

BHA Policy

BHA will operate a project-based voucher program using up to the maximum percent of its authorized units and budget authority for project-based assistance as determined by HUD. This assistance will be allocated over a multi-year period of up to 20 years, plus an option to extend (owners may request an extension) up to an additional 20 years if there is need for substantial, unanticipated rehabilitation, or other fiscal justification, and subject to Board review/approval.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, BHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, BHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6 and FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran. *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

BHA Policy

BHA may project base one or more of the above unit types at its discretion after submitting information to the HUD field office on the number of units and the exception categories BHA will set aside.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17; Notice PIH 2017-21 Attachment F]

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

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17 to qualify for this exemption.

BHA Policy

BHA may project-base one or more of the above unit types at its discretion.

17-I.B. HOUSING CHOICE VOUCHER (HCV)/TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

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

BHA Policy

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

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

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

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

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

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

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

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

BHA must describe the procedures for owner submission of PBV proposals and for BHA selection of PBV proposals [24 CFR 983.51; HUD Notice 2015-05]. Before selecting a PBV proposal, BHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. BHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

HUD Notification

As per PIH 2017–21 (HA), under HOTMA, BHA must provide advance notice to the HUD field office of its intent to project-base vouchers. While a PHA is no longer required to submit evidence of sufficient budget authority as part of this advance notice, it must still ensure that it will have budget authority sufficient to cover the PBV HAP contract at the point of contract execution.

The following information, must be submitted to the local HUD Office of Public Housing:

- (i) The number of units authorized under the ACC for the PHA;
- (ii) The number of PBV units entirely excluded from the percentage limitation (as described in Attachment F of this notice);
- (iii) The number of units qualifying under the 10 percent program cap exception category (as described in Attachment D of this notice);
- (iv) The number of units currently committed to PBV (excluding those PBV units meeting an exception under Attachment D or F of this notice).

To arrive at the “number of units committed to PBV,” total the number of units that are:

- (I) Currently under PBV HAP contract;
- (II) Under an Agreement to Enter into HAP contract (AHAP); and/or
- (III) Covered by a notice of proposal selection (24 CFR §983.51(d)); and

(v) The number of units to which the PHA is proposing to attach project-based assistance through the new RFP or selection.

The information must be submitted to HUD no later than 14 calendar days prior to the date the Request for Proposals is issued, or prior to making a selection based on a previous competition in accordance with 24 CFR §983.51(b).

BHA must submit the required information electronically to the HUD field office by sending an email to: **pbvsubmission@hud.gov**, with a copy to the relevant local HUD Office of Public Housing (PH) Director on its email submission.

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]

BHA must select PBV proposals in accordance with the selection procedures in the BHA Administrative Plan. BHA must select PBV proposals by either of the following two methods.

- BHA request for PBV Proposals. BHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to BHA request. BHA 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; or
- BHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]

BHA 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 BHA. 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 BHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

BHA Policy

At least annually, staff will determine if there is voucher/funding capacity available to issue an allocation of Project-based vouchers, and make a recommendation to the Board for consideration. If the decision is to do so:

As one option for accepting proposals for PBV assistance, BHA will accept proposals from owners that were competitively selected by the City of Berkeley under its annual or periodic Notice of Funding of Availability for the Housing Trust Fund or under another

federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis. A project will not be deemed ineligible if a financing scenario *considered* award of PBV.

Or, BHA may periodically advertise that it is accepting proposals on the BHA website www.cityofberkeley.info/bha and in the following publications:

- East Bay Times and/or
- Berkeleyside

In addition to, or in place of advertising, BHA may directly contact specific developers/property owners that have already been selected for federal, state, or local housing funding assistance based on a previously held competition, to inform them of available PBV assistance.

Selection of Proposals

BHA will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities to areas of lower poverty concentration within Berkeley;
- Number of new affordable housing rental units created:
 - Via new construction;
 - Rehabilitation and return to market of previously off-line units; or
 - Acquisition and rehabilitation.
- Extent to which the living units themselves receive rehabilitation or modernization, in addition to any required system improvements;
- Extent to which projects serving families, elderly or disabled households include 1, 2 and 3 bedroom units;
- Extent to which the project serves a special needs population (senior, disabled, Families, emancipated youth, veterans, chronically homeless) in the City of Berkeley and, the specific populations as allowable under the additional 10% of PB allocations under HOTMA (see list of excepted units on Pg. 17-2) ;
- Extent to which the project includes fully accessible or adaptable units for wheelchair access;
- History of tenant screening policies/practices that are inclusive, and give regard to hardships typical to families with limited financial means;
- Extent to which an allotment of PBV's to a special needs population would more equitably distribute the available PBVs throughout all of the categories and throughout the City;
- Demonstrated need for PB subsidy as a financing mechanism to enhance the long-term viability of an existing or proposed development at rents affordable to households up to 50% Area Median Income;
- Owner experience and capability to build or rehabilitate the housing;

- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- Other criteria as stated in the resolution of the Board of Commissioners.

Award of PB Vouchers

The resolution approved by the Board will include appropriate milestones to ensure that projects move forward in accordance with the project schedule, and that Project-based vouchers are placed into service, providing rental assistance to qualified households.

BHA-owned Units [24 CFR 983.51 (b) and (e) and 983.59]

BHA-owned or controlled units, and/or housing owned or developed or co-developed by Affordable Housing Berkeley, Inc. (AHB), 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 BHA-owned units were appropriately selected based on the selection procedures specified in the BHA Administrative Plan. The independent entity may be a unit of local government, a high performing local housing authority, HUD field office, or a contracting entity.

If BHA or AHB submits a proposal for project-based housing that is owned or controlled or developed or co-developed, by BHA or AHB, as defined by PIH Notice 2017-21, BHA or AHB will:

- Seek HUD approval to have an independent entity review the proposal and determine if BHA's or AHB proposal should be selected. If HUD does not approve of the independent entity, BHA will seek HUD's review of BHA's or AHB's proposal.
- Use an independent entity which meets HUD approval to perform HQS Inspections.
- Use an independent entity which meets HUD approval to determine contract rents and rent reasonableness. The initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser.
- Obtain HUD approval for the services of these entities prior to selecting the proposal for BHA-or AHB owned or controlled, developed, or co-developed housing.

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

BHA Policy

BHA may submit a proposal for project-based housing that is owned or controlled or developed or co-developed by BHA or by Affordable Housing Berkeley, Inc. (AHB). If the proposal for BHA-owned housing or those owned or controlled, developed, or co-developed by Affordable Housing Berkeley, Inc. (AHB) is selected, BHA will use the HUD field office to review the BHA selection.

The independent entities selected may be a unit of local government, a high performing local housing authority, HUD field office, or a contracting entity, for the following:

establishing the initial contract rent, based on an appraisal by a licensed, state certified appraiser, and performance of HQS inspections of the BHA selection, prior to entering into the Housing Assistance Payment Contract.

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

BHA Notice of Owner Selection [24 CFR 983.51(d)]

BHA 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.

BHA Policy

BHA will give prompt written notification to the selected owner(s) of a PBV program award. The award notice will include the number of vouchers awarded by bedroom size, any conditions or expiration date of the award, and specify other requirements such as need for environmental and subsidy layering reviews prior to signing the AHAP contract; and hiring a Davis-Bacon wage monitor. BHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner(s) and post the selection on the BHA website.

Documents regarding BHA's basis of selection for PBV proposals will be made available for public inspection. This excludes sensitive owner information, e.g., financial statements and similar information about the owner. BHA will make these documents available for review at BHA during normal business hours. The cost for reproduction of allowable documents will be in accordance with established schedule of fees and charges for public documents in effect at the time of request.

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

BHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed or co-developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of BHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

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

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

Ineligible Housing Types [24 CFR 983.53]

BHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes (however, if approved by HUD modular construction will be allowed); and transitional housing. In addition, BHA may not attach or pay PBV assistance for a unit occupied by an owner and BHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

Subsidized Housing [24 CFR 983.54]

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

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

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

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

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

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

BHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies, the PHA may not enter into an Agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

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

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

25 Percent per Project or 25 Units Cap [24 CFR 983.56(a), FR Notice 11/24/08, HUD Notice 2017-21 Implementation Guidance: Housing Opportunity Through Modernization Act of 2016 (HOTMA)]

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

Exceptions to 25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, PIH 2017-21]

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

- Units exclusively serving elderly families
- Units housing households eligible for supportive services available to all families receiving PBV assistance in the project.
- Units in projects that are in a census tract with a poverty rate of 20% or less are subject to a higher 40% cap.

BHA must include in BHA 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.

Under HOTMA, dwelling units that are exclusively made available to “households eligible for supportive services that are made available to the assisted residents of the project, according to the

standards for such services the Secretary may establish” are excepted from the project cap. Previously, the supportive services exception applied only if the family was receiving supportive services.

Supportive Services

In order for the supportive services exception to apply to a unit, the project must make supportive services available to all assisted families in the project, and the family must be eligible for one or more of the services. The family may, but is not required to, participate in the services. A PHA may not require participation in supportive services as a condition of living in an excepted unit, which means that a PHA may not rely solely on a supportive services program that would require the family to engage in the services once enrolled, such as the Family Self-Sufficiency (FSS) program, for the unit to qualify for the supportive services exception.

The exception applies to any household eligible for the supportive services and is not limited to households with a family member with a disability. The supportive services do not need to be provided by the owner or on-site, but the services must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible.

It is not necessary that the services be provided at or by the project, if they are approved services.

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 BHA 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.

BHA 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. BHA's Administrative Plan must state the form and frequency of such monitoring.

BHA Policy

BHA will provide PBV assistance for excepted units.

- To enhance the accessibility and effectiveness of programs serving a special needs population, BHA may attach PBV assistance to units developed or co-developed with Housing Opportunities of Persons with AIDS (HOPWA) or Mental Health Services Act (MHSA) Housing Program funding as long as the HOPWA or MHSA program funding does not duplicate any form of rental assistance for the family.
- BHA may also attach PBV assistance to units developed or co-developed for and occupied by elderly and disabled families and/or families in need of services. Families in need of services may include elderly families, disabled families, families in need of particular supportive services, or families participating in the Family Self Sufficiency Program.

BHA will receive at least annually, reports from the Project-based developer/owner describing the supportive services offered, number and frequency, and number of contacts/service provisions/referrals made.

Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers are exempt from the project cap. In addition, units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

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

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

BHA may 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. BHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-building cap of less than 25 percent.

BHA Policy:

BHA will not impose any further cap on the number of PBV units assisted per building.

17-II.G. SITE SELECTION STANDARDS

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

BHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless BHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the BHA Plan under 24 CFR 903 and BHA Administrative Plan.

In addition, prior to selecting a proposal, BHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

BHA Policy

It is BHA's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal BHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or more.

However, BHA will grant exceptions to the 20 percent standard where BHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

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

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition, disposition, or HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed or co-developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

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

BHA may not enter into an Agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;

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

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

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

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

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

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

PART III: DWELLING UNITS

17-III.A. OVERVIEW

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

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

The housing quality standards (HQS) for the HCV/tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental (however, if approved by HUD modular construction will be allowed), and the homeownership option do not apply because these housing types are not assisted under the PBV program.

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

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

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

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

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

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

17-III.D. INSPECTING UNITS

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

BHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, BHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, BHA may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

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

Turnover Inspections [24 CFR 983.103(c)]

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

Annual/Biennial Inspections [24 CFR 983.103(d), FR Notice 6/24/14, PIH 2015-05]

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

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

BHA Policy

BHA will conduct *qualified* biennial inspections on Project-based units, meaning annual inspections that pass on their first attempt will skip a year before the next annual HQS inspection; and annual inspections that fail on their first attempt will have an annual HQS inspection the following year.

Landlords and program participants will continue to be able to request a Special Inspection at any time, whether the unit passed or failed the first attempt of the most recent HQS inspection.

Other Inspections [24 CFR 983.103(e)]

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

BHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting BHA supervisory quality control HQS inspections, BHA includes a representative sample of both HCV/tenant-based and project-based units in the universe of units from which to draw the random sample on a quarterly basis.

Inspecting BHA- or AHB-owned Units [24 CFR 983.103(f)]

In the case of BHA-owned units, or those owned or co-owned, developed, or co-developed by AHB, Inc., the inspections must be performed by an independent agency designated by BHA and approved by HUD. The independent entity must furnish a copy of each inspection report to BHA and to the HUD San Francisco field office. BHA 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 BHA- or AHB-ownership.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

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

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

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

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT (AHAP)

In order to offer PBV assistance in newly constructed units, BHA must enter into an Agreement to enter into HAP contract (AHAP) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, among other HUD compliance requirements that may or may not apply to each project (such as Davis-Bacon wage monitoring and Section 3 hiring) and BHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, BHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

Content of the Agreement [24 CFR 983.152]

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

- Site and the location of the contract units;
- Number of contract units by area (square footage) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement, including the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]

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

BHA Policy

BHA will enter into the AHAP with the selected owner promptly, after receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

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

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The developer is responsible for hiring a Davis-Bacon wage monitoring firm and furnishing BHA staff, in a timely manner, with all copies of weekly payroll records for all contractors/subcontractors involved in the project, as well as analysis of payroll records and any discrepancies and follow up/resolution to such discrepancies.

The owner will be responsible for covering the costs for proper Davis-Bacon wage monitoring, including the hiring of a qualified contractor to whom BHA will have access to ensure proper monitoring and receive required monitoring documentation.

Equal Opportunity [24 CFR 983.154(c)]

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

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

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

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

17-IV.D. COMPLETION OF HOUSING

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

Evidence of Completion [24 CFR 983.155(b)]

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

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing; and
- Copy of Certificate of Occupancy as signed off by City of Berkeley Planning Dept.

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

BHA Policy

BHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. BHA will specify any additional documentation requirements in writing.

BHA Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, BHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. BHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the AHAP, BHA must not enter into the HAP contract.

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

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

BHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203, FR Notice 11/24/08]

The HAP contract must specify the following information:

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

Execution of the HAP Contract [24 CFR 983.204]

BHA may not enter into a HAP contract until each contract unit has been inspected and BHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after BHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after BHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement to enter into HAP, and the owner furnishes all required evidence of completion.

BHA Policy

For existing housing, the HAP contract will be promptly executed, pursuant to BHA's determination that all units pass HQS, and any qualified pre-existing household is eligible to continue residency in the unit with Project-based assistance.

For rehabilitated or newly constructed housing, the HAP contract will be executed promptly, pursuant to BHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion and any pre-existing tenancy is eligible to receive assistance in the unit with Project-based assistance.

Term of HAP Contract [24 CFR 983.205, FR Notice 11/24/08, PIH 2017-21]

BHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years.

BHA Policy

The initial term of all PBV HAP contracts will be 20 years unless a shorter term is negotiated.

At least annually, BHA will consider requests for an extension of the HAP term from projects with Project Based vouchers that expire within the next 12 months. BHA may extend the term of the contract administratively, without an open competition, for an additional term of up to 20 years if BHA determines an extension is required to secure funding to perform substantial, unanticipated rehabilitation. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. HUD does not allow for more than a cumulative total of 40 years of Project-based subsidy per master HAP contract.

BHA will provide the owner 18 to 12-month's notice of the expiration of the PBV HAP contract, and invite the owner to submit a letter requesting an extension. The BHA Board will act upon the staff recommendation at least six months prior to the HAP contract expiration.

BHA Policy

Extensions of master HAP contracts will be considered on a case by case basis, including whether (a) to extend for a full 20 years or a shorter timeframe, and (b) the need for substantial, unanticipated rehabilitation to preserve and/or extend the viability of the housing stock.

When determining whether or not to extend an expiring PBV contract, for how long, and the number of units, BHA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities;
- The extent to which projects that are serving families, elderly or disabled household include 1, 2, and 3 bedroom units
- Demonstrated need of the minimum number of project based vouchers required to (i) finance debt for substantial, unanticipated rehabilitation activity and (i) meet contractual obligation to rent to households at or below 50% of AMI.
- Preservation of fully accessible/adaptable units for wheelchair users; and,
- Whether the funding could be used more appropriately for project-based assistance at additional new construction projects, whether partially or completely owned by BHA, or another property requesting/needing PBV assistance, or in the tenant based voucher program.

Termination by BHA [24 CFR 983.205(c) and FR Notice 1/18/17]

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

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

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, BHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to BHA. In this case, families living in the contract units must be offered HCV/tenant-based assistance.

At its discretion BHAs may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17. And Notice PIH 2017-21]

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

Upon termination or expiration of the contract, a family living at the property is entitled to receive an HCV/tenant-based voucher. HCV/tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV/tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain

except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

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

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

BHA Policy

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

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.207]

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

Addition of Contract Units [24 CFR 983.207, FR Notice 1/18/17, and PIH 2017-21]

At BHA's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of BHA's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

BHA Policy

BHA will consider adding contract units to the HAP contract, if funding/units are available, and if the PHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families);
- Market-force scarcity of available units; and

- Voucher holders are having difficulty finding units that meet program requirements.

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

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

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

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

Assistance granted to an eligible household will be subject to annual recertification on the anniversary of occupancy, as well as any changes to the household in between annual recertifications that may affect the occupancy requirements of the family (i.e. number of bedrooms).

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

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

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by BHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family is actively residing in the contract unit for which the owner is receiving HAP, has not been absent for 30-or more consecutive days, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

17-V.F. ADDITIONAL HAP REQUIREMENTS

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

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

BHA Policy

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

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of BHA, the HAP contract may provide for vacancy payments to the owner for a BHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by BHA 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).

BHA Policy

During the initial term of the HAP contract, BHA will provide vacancy payments to the owner equal to the contract rent in effect at the time of the vacancy for a period not to exceed 60 days. The HAP contract with the owner will contain the terms under which vacancy payments are made.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

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

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

BHA may select families for the PBV program from those who are participants in BHA's HCV/tenant-based voucher program, from those who have applied for admission to the Project-based voucher program via the PB waitlist, or from referrals obtained by Project-based property managers if the PB waitlist is exhausted. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the HCV/tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

BHA Policy

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

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

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by BHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the BHA's waiting list. Once the family's continued eligibility is determined (BHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and BHA must refer these families to the project owner for an appropriately sized or classified PBV unit in the project, should their family composition change, necessitating a differently sized or classified unit.

Admission of eligible in-place families is not subject to income targeting requirements, but is subject to all income and asset requirements to the Section 8 Program. This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

If an in-place family is not eligible to participate in the program, at the time of HAP signing, their unit will not be added as an assisted contract unit in the master HAP. If the owner cannot find an in-place family in an appropriately sized (by bedroom size) unit to replace the one occupied by a non-qualified family, the approved allocation will be reduced to reflect the number of units where in-place families do qualify for Section 8 assistance.

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

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

If BHA decides to establish a separate PBV waiting list, BHA may use a single waiting list for BHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

BHA Policy

BHA will use (a) one waiting list for the HCV/tenant-based voucher program and, (b) one waiting list for the project-based voucher programs subdivided by (i) senior, over 62-years of age (ii) emancipated youth, (iii) HOPWA and (iv) one waiting list created from applications received from a restricted waiting list opening for families qualifying for 3 or 4 bedroom units; as well as a general Project-based waitlist for all household types. BHA will give applicants from the tenant based waiting list and existing tenant based voucher holders who are not appropriately housed an opportunity to be considered for PBV units after exhausting the PBV waiting lists. If all of these options are exhausted, BHA either will open up the Project-based waitlist; or allow, after written request, properties to self-refer qualified applicants for vacant project based units.

In cases where PBV units are set aside for homeless individuals referred by the North County Coordinated Entry System (CES) in Berkeley, BHA accepts referrals for those PBS8 qualified households; additionally the BHA PB Emancipated Youth waitlist is exhausted, so PBV units housing this population are self-referred by properties to BHA for filling those vacancies.

VAWA victims in the HCV/Tenant-based Section 8 program, and families needing accessibility features who are not able to obtain specialized units, on a case-by case basis, may bypass the PBV waiting list, and be offered a vacant PBV unit.

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

Applicants who will occupy units with PBV assistance must be selected from BHA's waiting list. BHA may establish selection criteria or preferences for occupancy of particular PBV units. BHA may place families referred by the PBV owner on its PBV waiting list.

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

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

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

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

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

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

Although BHA is prohibited from granting preferences to persons with a specific disability, BHA may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- Qualifying for units with HOPWA funding;
- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.
- With one or more families members that require wheelchair accessibility.

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

If BHA has projects with more than 25 percent of the units or 25 units in total, receiving project-based assistance because those projects include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), BHA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

BHA Policy

BHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units).

17-VI.E. OFFER OF PBV ASSISTANCE

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

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

- Refuse to list the applicant on the waiting list for HCV/tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the HCV/tenant-based voucher waiting list.

Each family will have a total of two opportunities to be offered assistance. These offers will be at two different properties. If the family denies or refuses offers, or if the family is denied twice by both properties, the project based applicant will be removed from the waitlist.

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

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

Acceptance of Offer [24 CFR 983.252]

Family Briefing

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

Persons with Disabilities

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

Persons with Limited English Proficiency

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

17-VI.F. OWNER SELECTION OF TENANTS

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

Leasing [24 CFR 983.253(a)]

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

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify BHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, BHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. If the PBV waitlist is exhausted, the Property Manager may refer applicants to the PBV waitlist. BHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

BHA Policy

The owner must notify BHA in writing (phone or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

BHA will make every reasonable effort to refer families to the owner within 2-10 business days of receiving such notice from the owner. However, if the PBV waitlist is exhausted, the Property Manager may refer applicants to the PBV waitlist.

BHA will invite owners of properties with PBV assistance to attend any PB group briefing for households receiving Project Based assistance.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, BHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

BHA Policy

If any contract units have been vacant for 120 days, BHA may give notice to the owner that the HAP contract may be amended to reduce the number of contract units that have been vacant for this period. The amendment to the HAP contract will be effective the 1st day of the month following the date of BHA's notice.

17-VLG. TENANT SCREENING [24 CFR 983.255]

BHA Responsibility

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

BHA Policy

BHA will not conduct screening to determine a PBV applicant family's suitability for tenancy, unless the applicant is to move into a BHA or AHB-owned or managed unit. BHA may deny applicants based on such screening.

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

BHA Policy

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

Owner Responsibility

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

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Compliance with other essential conditions of tenancy.

BHA will carefully monitor rejection of applicants based on credit and rental history to ensure that the project owner is, in the spirit of affordable housing opportunities, (a) only considering factors that address the rental obligations; (b) granting applicants an opportunity to appeal the determination, and (c) giving proper consideration to factors that may have resulted in an adverse termination, i.e. major illness, loss of income, employment.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

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

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

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

Form of Lease [24 CFR 983.256(b)]

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

BHA Policy

BHA's review of the owner's lease is limited to (a) conditions that are discriminatory, or (b) violate a HUD rule, or (c) are onerous (i.e. excessive late fees). If BHA determines that the lease does not comply with state or local law, BHA may decline to approve the tenancy. BHA will inform owners of their responsibility to screen prospective tenants, and will upon request, provide owners with the required known name and address information, at the time of the initial HQS inspection or before. BHA will also allow an owner to review prior inspection reports, upon submission of a Request for Tenancy Approval.

BHA permits owners and families to execute separate, non-lease agreements for parking, storage, services, appliances (other than range and refrigerator) and other items that are not included in the lease. The owner must provide BHA a copy of any such agreement.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Lease Requirements [24 CFR 983.256(c)]

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

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

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;

- The composition of the household as approved by BHA (the names of family members and any BHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, or refuse to renew the lease for “good cause.” If the owner refuses to renew the lease without good cause, BHA must provide the family with an HCV/tenant-based voucher and remove the unit from the PBV HAP contract.

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

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

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

Owner Termination of Tenancy [24 CFR 983.257]

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

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

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by BHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

Security Deposits [24 CFR 983.258]

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

BHA Policy

BHA will encourage the owner to collect a security deposit amount the owner determines is appropriate and consistent with their established leasing policies.

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

Per the Rent Stabilization Ordinance, the owner must, annually in December, refund the interest on the security deposit to the family in the form of a payment or rent rebate.

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

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

17-VII.C. MOVES

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

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

BHA Policy

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

- PBV assistance in the same building or project;
- PBV assistance in another project owned by the same developer;
- PBV assistance in another property owned by a different developer; then
- HCV/Tenant-based voucher assistance.

If BHA offers the family an HCV/tenant-based voucher, BHA 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 BHA).

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

BHA Policy

When BHA offers a family another form of assistance that is not an HCV/tenant-based voucher, the family will be given 60 days from the date of the offer to accept the offer

and move out of the PBV unit. If there is no appropriate vacancy in another unit with project based assistance, BHA will continue the subsidy at the existing level for six months to allow the family to move to an appropriate unit with S8 tenant based assistance, if eligible. If the family does not move out within this 60-day or 6-month time frame, BHA will terminate the housing assistance payments at the expiration of this 60-day or 6-month period.

BHA may make exceptions to this 60-day or 6 month time period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to BHA. If the family wishes to move with continued HCV/tenant-based assistance, the family must contact BHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, BHA is required to offer the family the opportunity for continued HCV/tenant-based assistance, in the form of a voucher. If voucher assistance is not immediately available upon termination of the family's lease in the PBV unit, BHA must give the family priority to receive the next available opportunity for continued HCV/tenant-based assistance.

If the family terminates the assisted lease before the end of the first year in the PB unit, the family relinquishes the opportunity for continued HCV/tenant-based assistance.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

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

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

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

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

- 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c), FR Notice 11/24/08]

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

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

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

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

However, BHA may use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

Definitions

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

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

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

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

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

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

BHA Policy

Upon written request by the owner, BHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. BHA will review and make a decision based on the circumstances and merit of each request.

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

Redetermination of Rent [24 CFR 983.302, FR Notice 11/24/08]

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

Rent Increase

If an owner wishes to request an increase in the rent to owner from BHA, it must be requested at the annual anniversary of the HAP contract for the assisted family (see Section 17-V.D.). The request must be in writing and in the form and manner required by BHA. BHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

BHA Policy

An owner is limited to one contract rent increase per 12 month period; the increase will coincide with the anniversary of the tenancy. To preserve affordability at 30% of adjusted monthly income, BHA will reduce an owner's request for a contract rent increase to a maximum of Payment Standard less the applicable utility allowance.

BHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance. The HUD provisions outlined in section 17-VIII.B. RENT LIMITS [24 CFR 983.301] (see above) still apply.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment. However, the PHA may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

Notice of Rent Change

The rent to owner is redetermined by written notice by BHA to the owner specifying the amount of the redetermined rent. BHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

BHA Policy

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

BHA-owned Units [24 CFR 983.301(g)]

For BHA-owned or AHB-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. BHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by BHA.

When Rent Reasonable Determinations are Required

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

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

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, BHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-

based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by BHA. The comparability analysis may be performed by BHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

BHA-owned Units

For BHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for BHA-owned units to the BHA and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, BHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

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

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

Other Subsidy [24 CFR 983.304]

At its discretion, BHA may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

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

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

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

Rent Control [24 CFR 983.305]

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

PART IX: PAYMENTS TO OWNER

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

During the term of the HAP contract, BHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and BHA agree on a later date.

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

The amount of the housing assistance payment by BHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

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

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

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

BHA Policy

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

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

- The owner gives BHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by BHA to verify that the owner is entitled to the vacancy payment.

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

BHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified BHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and BHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of BHA's request, no vacancy payments will be made.

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

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by BHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the BHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by BHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by BHA. The owner must immediately return any excess payment to the tenant.

Tenant and BHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by BHA.

Likewise, BHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. BHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. BHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, BHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

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

BHA Policy

Families deemed eligible for a utility reimbursement must establish and maintain utilities in the name of the head of household or spouse/partner. BHA, at its sole discretion, will make payment to the family or direct utility reimbursements to Pacific Gas and Electricity (PG&E) on behalf of the family.

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

Meals and Supportive Services

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

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

Other Charges by Owner

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

If off-street parking is not a standard offering included in the rent, the owner may assess a reasonable fee to households opting for the service.