

To: Honorable Chairperson and Members of the Berkeley Housing Authority Board

From: James Williams, Executive Director

Subject: AUTHORIZING THE RENEWAL OF A PROJECT-BASED VOUCHER (PBV) HOUSING ASSISTANCE PAYMENT (HAP) CONTRACT AND ESTABLISHING FY 2026 PAYMENT STANDARDS FOR UNITS AT 2909 AND 2919 9TH STREET, BERKELEY, CA (ASHBY LOFTS).

RECOMMENDATION

AUTHORIZING THE RENEWAL OF A PROJECT-BASED VOUCHER (PBV) HOUSING ASSISTANCE PAYMENT (HAP) CONTRACT AND ESTABLISHING FY 2026 PAYMENT STANDARDS FOR UNITS AT 2909 AND 2919 9TH STREET, BERKELEY, CA (ASHBY LOFTS)

BACKGROUND

ASHBY LOFTS REHABILITATION

Location: 2909 and 2919 9th Street, Berkeley, CA

Owner: Ashby Lofts Associates, L.P.

Project Lead: Carrie Lutjens, Edward Horn
General Contractor: D + H

Construction

Sources & Uses:

Uses		Perm Sources	
Acquisition	17,148,183	City/County/State*	13,284,476
Hard Costs	10,942,708	Tax Credit Equity	13,909,368
Soft Costs	8,817,861	Seller-Carryback Loan	2,841,676
		Other Sources**	6,243,232
Total	36,278,752	Total	36,278,752

* New City of Berkeley funding commitment, existing Berkeley Loan and existing MHP Loan

** Other sources include: Deferred Developer Fee, accrued interest, a perm loan, and income from operations.

Building & Lot Size: Building is 51,365 square feet and lot size is 21,570 square feet.

Project Description: The project is a rehabilitation and likely re-syndication of an existing multifamily development in West Berkeley, which includes 54 units in a mix of 18 one-, 24 two-, and 12 three-bedroom apartments. The unit targeting is 30-50% of the Area Median Income.

Project Background: Ashby Lofts was originally constructed in 2007 and has been owned and operated by AHA and SAHA since. In recent years water intrusion damages compromised the integrity of exterior decks and stairs. Extensive shoring was performed in 2019 to address immediate safety concerns, but repairs and replacement of some of these building elements is needed to maintain safe access and walkways for the building's lifetime.

Construction Scope:

The rehabilitation project will include substantial life safety upgrades to the building exterior. Specifically, repairs and replacement of the exterior elevated stairs and walkways is needed to maintain safe access and walkways for the building's lifetime. The project will increase energy efficiency by more than 11% by replacing the existing combined heating/hot water boilers with 98% high efficiency furnaces. Roofs will be repaired and replaced as needed, the photovoltaic system (on the roof) replaced and expanded with more efficient panels to help offset the buildings higher electrical load, and the entire building exterior will be painted. Stucco repair and waterproofing improvements will also be performed as needed on the building exterior. Common area finishes, landscaping, the courtyard fence and play structure will be replaced.

Timeline (if awarded tax credits):

- 2025: September TCAC Application and November Reservation (if awarded)
- 2026: May Construction Start
- 2027: February Construction Completion and December conversion to permanent financing

RESOLUTION NO. 2025-XX

A RESOLUTION OF THE BERKELEY HOUSING AUTHORITY BOARD OF COMMISSIONERS AUTHORIZING THE RENEWAL OF A PROJECT-BASED VOUCHER (PBV) HOUSING ASSISTANCE PAYMENT (HAP) CONTRACT AND ESTABLISHING FY 2026 PAYMENT STANDARDS FOR UNITS AT 2909 AND 2919 9TH STREET, BERKELEY, CA (ASHBY LOFTS)

WHEREAS, the Berkeley Housing Authority (BHA) is authorized to administer the U.S. Department of Housing and Urban Development (HUD) Section 8 Project-Based Voucher (PBV) program in Berkeley, CA, and to enter into Housing Assistance Payment (HAP) contracts with property owners; and

WHEREAS, the BHA has a current HAP contract with Ashby Lofts Associates, L.P., the owner of the affordable housing project located at 2909 and 2919 9th Street, Berkeley, CA, commonly known as Ashby Lofts; and

WHEREAS, the current HAP contract for the designated PBV units at Ashby Lofts is scheduled to expire on or around July 2027 requiring a renewal to ensure continued housing assistance for the residents; and

WHEREAS, a renewal of the PBV HAP contract is consistent with the BHA's goals of preserving affordable housing and expanding housing opportunities in the community; and

WHEREAS, HUD published the FY 2026 Fair Market Rents (FMRs), effective October 1, 2025, which serve as the basis for calculating PBV payment standards; and

WHEREAS, BHA staff will perform a rent comparability study as required by HUD regulations to determine appropriate contract rent levels for the PBV units at Ashby Lofts post substantial rehabilitation; and

WHEREAS, the Board of Commissioners has reviewed the staff's recommendations for the renewal of the PBV HAP contract and other matters as identified in the enclosed draft letter;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE BERKELEY HOUSING AUTHORITY:

SECTION 1: The Board of Commissioners authorizes and directs the Executive Director, or their designee, to execute all necessary documents for the renewal of the PBV HAP contract with the owner of the Ashby Lofts at 2909 and 2919 9th Street, Berkeley, CA.

SECTION 2: The term of the renewed PBV HAP contract shall be in accordance with HUD regulations and guidance, including but not limited to the required rent comparability study.

SECTION 3: This resolution shall take effect immediately upon its adoption and is subject to the availability of sufficient funding from HUD.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on September 30, 2025, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Attest: _____

James Williams, Secretary

Date

Ms. Susan Friedland
Satellite Affordable Housing Associates
1835 Alcatraz Avenue
Berkeley, CA 947031

Re: Section 8 Housing Assistance Payment (HAP) Contract Renewal and FY 2026 PBV Payment Standards for 2909 and 2919 9th Street, Berkeley, CA 94710

Dear Ms. Friedland:

This letter confirms that Ashby Lofts Associates, L.P. and the Berkeley Housing Authority (BHA) have a current, executed Section 8 Project-based Voucher Housing Assistance Payment (HAP) contract, for 20 units at 2909 and 2919 9th Street, Berkeley, CA. The current HAP Contract expires in July 2027.

The BHA understands that the current owner intends to refinance and renovate the project using low-income housing tax credits and tax-exempt bonds. At the closing of the new financing, BHA intends to authorize the assignment of the existing Section 8 HAP contract to the proposed owner and execute a new Section 8 Project-Based Voucher HAP Contract to be effective on the first day of the following month for up to a 20 years in increments of 10-years, 5 years and 5 years, subject to compliance with HUD's PBV regulations governing substantial rehabilitation (enclosed).

In addition, these PBV dwelling units will be subject to the National Standards for the Physical Inspection of Real Estate (NSPIRE), approval of a subsidy layering review, compliance with and completion of environmental review of the Project pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Protection Act ("NEPA") and approval thereof, as well as all other applicable requirements.

When project-based voucher assistance is proposed for newly constructed and rehabilitated structures, subsidy layering reviews may be satisfied if the applicable State or local agency has conducted such a review. HUD has defined these agencies to be qualified housing credit agencies (HCA), which may include State housing finance agencies or other State housing agencies that meet the definition of an HCA as defined under Section 42 of the IRC of 1986.

Project-Based Voucher developments must also comply with design and construction requirements of the Fair Housing Amendments Act of 1988, implement regulations at 24 CFR 100.205, as applicable and accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implement regulations at 24 CFR part 8.

Substantial rehabilitation of developments with nine or more units will involve application of the federal Davis-Bacon construction wage guidelines. The owner and owner's contractors and subcontractors must comply with all applicable state and federal labor regulations laws and regulations, federal equal employment opportunity requirements, and HUD's implementing regulations. (CFR 24 Part 983).

Effective January 1, 2026, BHA’s payment standards for its Project-Based Voucher program are scheduled to take effect. The BHA updates its payment standards on an annual basis and will do so for FY 2027 effective January 1, 2027.

BHA Payment Standards (Effective 1/1/2026)	SRO	Efficiency	One- Bedroom	Two- Bedroom	Three- Bedroom	Four- Bedroom
120% of FY 2026 FMR - PBV Program	\$ 1,927	\$ 2,570	\$ 2,862	\$ 3,494	\$ 4,468	\$ 5,295

Project-Based Voucher rents for Low Income Housing Tax Credit (LIHTC) units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.

Except for contract units not located in a qualified census tract, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) may not exceed the lower of the reasonable rent, or up to 120 percent of the applicable Fair Market Rent (FMR) (or any exception payment standard approved by the Secretary) minus utility allowance, or, if applicable, the tax credit rent. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.

If a market study has been completed, please provide the BHA with the results.

Upon 100% completion of the rehabilitation, dwelling units will be eligible for the "post-rehab" rents subject to:

- 1) Submission from the owner of the rehabilitation work a certification of 100% completion, or its substantial equivalent from the City of Berkeley Building Inspector;
- 2) Compliance with HUD’s PBV regulations governing substantial rehabilitation (enclosed);
- 3) Passage of the National Standards for the Physical Inspection of Real Estate (NSPIRE);
- 4) BHA’s rent reasonableness determination of dwellings units based on: (1) The location, quality, size, unit type, and age of the contract unit; and (2) Any amenities, housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. The BHA will determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units.

Ashby Lofts (2909 and 2919 9th Street, Berkeley, CA) meets a critical need for the community by providing rental housing for very low and extremely low income families and disabled households. BHA is supportive of the owner's intention to extend the useful life of the project and preserve its affordability over the long term.

If you have questions regarding this letter, please contact Will Daniels, Director of Operations at WDaniels@berkeleyca.gov.

Sincerely,

James Williams
Executive Director

cc: Carrie Lutjens and Edward Horn (SAHA)s
HUD PBV regulations regarding substantial rehabilitation

§ 983.212 Substantial improvement to units under a HAP contract.

(a) *Substantial improvement to units under a HAP contract.* The owner may undertake substantial improvement on a unit currently under a HAP contract, except a contract subject to a rider under the rehabilitated housing option for development activity after HAP contract execution in accordance with § 983.157, if approved to do so by the PHA. The owner may request PHA approval no earlier than the effective date of the HAP contract. The following conditions apply:

(1) The PHA may approve the substantial improvement only if one of the following conditions apply:

(i) The unit has been damaged by fire or natural disaster, or other extraordinary circumstances exist which require a unit previously compliant with HQS to urgently undergo substantial improvement. For this purpose, “extraordinary circumstances” are unforeseen events that are not the fault of the owner. The PHA may provide approval for substantial improvement resulting from the damage or extraordinary circumstances described in this paragraph (a)(1)(i) after the owner submits the request.

(ii) The owner requests to engage in substantial improvement that will commence following the first two years of the effective date of the HAP contract. The PHA may provide approval for substantial improvement occurring as described in this paragraph (a)(1)(ii) after the owner submits the request, but no earlier than twenty-one

months after the effective date of the HAP contract.

(2) The owner’s request must include a description of the substantial improvement proposed to be undertaken and the length of time, if any, the owner anticipates that the unit, including items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24 CFR 5.703(a)(2), will not meet HQS. The PHA must not approve as substantial improvement, under this section, an owner’s request to demolish a building containing contract units and newly construct replacement units (see requirements for contract termination at § 983.206 and requirements for newly constructed housing in this part 983).

(3) If the unit is occupied and will not meet HQS during any part of the period of the substantial improvement, the owner’s request must include a description of the owner’s plan to house the family during the period the unit will not meet HQS. The PHA must not approve the substantial improvement

unless the owner’s plan complies with one of the following requirements:

(i) The owner must complete the substantial improvement without the family vacating the unit if the PHA reasonably expects that the owner can complete the substantial improvement in a manner that:

(A) Does not result in life-threatening deficiencies;

(B) Does not result in any other deficiencies under the HQS that are not corrected within 30 days; and

(C) Is mutually agreeable to the owner and the family;

(ii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section cannot be achieved, the owner must temporarily relocate the family to complete the substantial improvement if:

(A) The PHA reasonably expects that

the owner can complete the relocation and substantial improvement within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month); and

(B) The family can be relocated to a

location and in a manner mutually agreeable to the owner and the family; and

(iii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section and temporary relocation in paragraph (a)(3)(ii) of this section cannot be achieved, the following protocol for lease termination and relocation applies:

(A) If there are contract units within

the project will meet HQS during the period of substantial improvement and that are vacant or expected to become vacant at the time of the planned lease termination, the PHA must refer

the family to the owner for occupancy of an appropriate-size contract unit. If the family accepts the offered unit, the owner must provide the family with a reasonable time to move to the offered unit, must pay the family's reasonable moving expenses, must execute a lease with the family for the offered unit to be effective at the time of the family's move, and must terminate the lease for the family's original unit at the time of the family's move. The owner must terminate the family's lease if the family rejects the offered unit; however, the PHA must first offer the family a different unit or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section if needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities. The PHA must consider other family requests for a different unit

or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section;

(B) If no other contract unit within the project is available for the family to lease during the period of substantial improvement, the PHA must issue the family a tenant-based voucher. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (*e.g.*, an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. The PHA may also issue the family a tenant-based voucher to accommodate the family's need or request as provided in paragraph (a)(3)(iii)(A) of this section. The PHA must issue the voucher no fewer than 90 calendar days prior to the planned lease termination in the case of substantial improvement pursuant to paragraph (a)(1)(ii) of this section. The PHA must issue the voucher as soon as practicable in the case of substantial improvement pursuant to paragraph (a)(1)(i) of this section. If the family is eligible and willing to request a voucher to move in accordance with § 983.261, the PHA must issue the family the voucher to move under that section. If the family is not eligible or is unwilling to request a voucher to move under § 983.261, the PHA must remove the family's unit from the PBV HAP contract and issue the family its voucher to move with tenant-based assistance and subsequently add a unit back to the PBV HAP contract at such time that

the unit is ready for occupancy. The PHA must extend the voucher term until the family either leases a unit with the tenant-based voucher or accepts a contract unit, whichever occurs first; and
(C) If the family moves from the project during the period of substantial improvement, the PHA must offer the family the option to return to the project with PBV assistance, if the family is eligible for PBV assistance, following completion of substantial improvement at the project. The PHA, or owner in the case of an absolute selection preference for occupancy in the project.
(4) The PHA must abate housing assistance payments for a unit beginning at the time the unit has any deficiency under HUD's HQS during the period of substantial improvement. The timing for the PHA to begin withholding and abatement specified in § 983.208(d) does not apply to deficiencies occurring during the period of substantial improvement. When all deficiencies in the unit are corrected, the PHA must recommence payments to the owner if the unit is still occupied by an assisted family, subject to paragraphs (a)(5) and

(b)(1) of this section. Additionally, the PHA must not pay vacancy payments during the period of substantial improvement.

(5) The terms of the PHA approval must be recorded in an addendum to the HAP contract. The PHA may choose to temporarily remove vacant units from the PBV HAP contract during the time the units will not meet HQS during the substantial improvement. If the PHA temporarily removes a unit, the PHA reinstates the unit in accordance with § 983.207(b). Owner failure to complete the substantial improvement as approved shall be a breach of the HAP contract and the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination pursuant to § 983.206(c)(2).

(b) *Applicable requirements.* (1) Substantial improvement undertaken on units that are currently under a HAP contract is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(1) As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act

(42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to substantial improvement undertaken on units that are currently under a HAP contract.

(2) Any substantial improvement undertaken on units that are currently under a HAP contract that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the substantial improvement while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(3) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part

2424, may not participate in substantial improvement undertaken on units subject to a HAP contract. The HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(4) An owner must disclose any possible conflict of interest that would be a violation of the HAP contract or HUD regulations, in accordance with § 982.161 of this title.

(5) The requirements for additional assistance after HAP contract at § 983.11(d) apply to substantial improvement undertaken on units that are currently under a HAP contract.

(6) Section 983.155, Completion of work, applies to substantial improvement undertaken on units that are currently under a HAP contract.

(7) Section 983.156(a), Inspection of units, and (d), PHA-owned units, apply to substantial improvement undertaken on units that are currently under a HAP contract.

(c) *PHA-owned units.* For PHA-owned units, the independent entity must determine whether to approve the PHA proposal to undertake substantial improvement as provided in paragraph (a) of this section, including making the determinations in paragraphs (a)(3)(i) and (a)(3)(ii)(A) when the owner will undertake substantial

improvement in a unit currently occupied by an assisted family, as applicable (see § 983.57(b)(4)). The independent entity must approve the proposal if:

(1) The proposed substantial improvement meets one of the conditions of paragraph (a)(1) of this section;

(2) The description of the substantial improvement does not include plans to demolish a building containing contract units and newly construct replacement units; and

(3) The plan to house each family during the period that family's unit will not meet HQS complies with the requirements of paragraph (a)(3).

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

(a) *Amendment to substitute contract units.* At the discretion of the PHA, the PHA and owner may execute an amendment to the HAP contract to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit (the unit must comply with HQS to be substituted) and must determine the reasonable rent for such unit (the rent to owner must be reasonable for the unit to be substituted). The proposed substituted unit may be vacant or, subject to the requirements of paragraph (c) of this section, it may be occupied. The proposed substituted unit may undergo repairs or renovation prior to amending the PBV HAP contract to substitute the unit, as provided in paragraph (d) of this section. The proposed substituted unit must have existed at the time described in paragraph (e) of this section.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed the limitations in § 983.6 or § 983.54, the PHA and owner may execute an amendment to the HAP contract to add PBV units in the same project to the contract, without a new proposal selection. Prior to such addition, the PHA must inspect the proposed added unit (the unit must comply with HQS to be added) and must determine the reasonable rent for such unit

(the rent to owner must be reasonable for the unit to be added).

(1) Added units that qualify for an exclusion from the program cap (as described in § 983.59) or an exception to or exclusion from the project cap (as described in § 983.54(c) and § 983.59, respectively) will not count toward such cap(s).

(2) The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(3) The added unit may be vacant or, subject to the requirements of paragraph (c) of this section, it may be occupied.

(4) The unit may undergo repairs or renovation prior to amending the PBV HAP contract to add the unit, as provided in paragraph (d) of this section.

(5) The added unit must have existed at the time described in paragraph (e) of this section.

(a) *Substituting or adding occupied units.* The PHA may place occupied units on the HAP contract under paragraphs (a) or (b) of this section, subject to the following:

(1) The family occupying the unit must be eligible for assistance per §§ 983.53(a)(3) and 983.251(a);

(2) The unit must be appropriate for the size of the family occupying the unit under the PHA's subsidy standards;

(3) The family must be selected from the waiting list in accordance with the applicable selection policies; and

(4) The unit may be occupied by a family who was assisted with a tenant-based voucher immediately prior to the unit being placed on the PBV HAP contract. The tenant-based HAP contract for the unit must terminate before the unit may be placed under the PBV HAP contract. The family occupying the unit is not a new admission to the voucher program. The option described in this paragraph (c)(4) is subject to the following conditions:

(i) If the family is in the initial term of the tenant-based lease, the family agreed to mutually terminate the tenant-based lease with the owner and enter into a PBV lease.

(ii) If the initial term of the tenant-based lease has passed or the end of that term coincides with the time at which the unit will be placed on the PBV HAP contract, upon the owner's decision not to renew the tenant-based lease or to terminate the tenant-based lease in accordance with 24 CFR 982.308 or 982.310, respectively, the family agreed to relinquish the tenant-based voucher and enter into a PBV lease.

(b) *Substituting or adding units that underwent repairs or renovation.* A unit that is not under a HAP contract but is in a project with other units that are under a HAP contract may undergo repairs or renovation prior to amending the PBV HAP contract to add or substitute the unit, except in the case of a contract subject to a rider under the rehabilitated housing option for development activity after HAP contract execution in accordance with § 983.157. If such repairs or renovation constitute substantial improvement as defined in § 983.3, then:

(1) The substantial improvement must not proceed prior to the first two years of the effective date of the HAP contract, except in extraordinary circumstances (e.g., the units were damaged by fire, natural disaster, etc.).

(2) The substantial improvement is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(3) As applicable, the design and construction requirements of the Fair Housing Act and

implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including

8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including

§§ 35.150 and 35.151, apply to substantial improvement.

(4) Any substantial improvement that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the substantial improvement while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(5) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in substantial improvement. The HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(6) An owner must disclose any possible conflict of interest that would be a violation of the HAP contract or HUD regulations, in accordance with § 982.161 of this title.

(7) The requirements for additional assistance after HAP contract at § 983.11(d) apply.

(8) Section 983.155, Completion of work, applies.

(9) Paragraphs (a), (b)(4), and (d) of

§ 983.156, PHA acceptance of completed units, apply.

(c) *Restriction on substituting or adding newly built units.* Units may only be added to the HAP contract or substituted for a previously covered contract unit if one of the following conditions applies:

(1) The units to be added or substituted existed at the time of HAP contract execution;

(2) In the case of a project completed in stages, the units to be added or substituted existed at the time of PHA acceptance of the last completed unit(s) per § 983.156(c); or

(3) A unit, office space, or common area within the interior of a building containing contract units existed at the time described in paragraph (e)(1) or (2) of this section, as applicable, and is reconfigured without impacting the building envelope, subject to paragraph (d) of this section, into one or more units to be added or substituted.

(d) *Administrative Plan requirement.*

The PHA must describe in the Administrative Plan the circumstances under which it will add or substitute contract units, and how those circumstances support the goals

of the PBV program.

(e) *Staged completion of contract*

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

(f) *Amendment to merge or bifurcate*

HAP contracts. HUD may establish a process allowing the PHA and owner to agree to merge two or more HAP contracts for PBV assistance on the same project, or to bifurcate a HAP contract, by **Federal Register** notice subject to public comment.

§ 983.153 Development requirements.

(a) *Environmental review requirements.* The development activity must comply with any applicable environmental review requirements at § 983.56.

(b) *Subsidy layering review.* (1) The PHA may provide PBV assistance only in accordance with the HUD subsidy layering regulations (24 CFR 4.13) and other requirements. A subsidy layering review is required when an owner undertakes development activity and housing assistance payment subsidy under the PBV program is combined with other governmental housing assistance from Federal, State, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from Federal, State, or local agencies, including assistance such as tax concessions or tax credits.

(2) When a subsidy layering review is required, it must occur before a PHA attaches assistance to a project. Specifically, the PHA may not execute an Agreement or HAP contract with an owner until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(3) A further subsidy layering review is not required if HUD's designee has conducted a review in accordance with HUD's PBV subsidy layering review guidelines and that review included a review of PBV assistance.

(4) The owner must disclose to the PHA any change to the information provided for purposes of the subsidy layering review, including the amount of assistance or number of units to be developed, that occurs after the subsidy layering review has been conducted and before all contract units are placed under the HAP contract, in accordance with HUD requirements. A subsidy layering review may be required to determine if such a change would result in excess public assistance to the project, as required by HUD through notification in the **Federal Register**.

(5) 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, unless the owner discloses additional assistance in accordance with HUD requirements. A subsidy layering review is required for newly constructed or rehabilitated housing under a HAP contract that receives additional assistance, as described in § 983.11(d).

(6) Existing housing is exempt from subsidy layering requirements.

(c) *Labor standards.* (1) Labor standards as described in paragraphs (c)(2) of this section apply to development activity. When the PHA exercises its discretion at §§ 983.154(f) or 983.157(a) to allow the owner to conduct some or all development activity while the proposed PBV units are not under an Agreement or HAP contract, the applicable parties must comply with the labor standards in paragraph (c)(2) of this section from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection).

(2) In the case of development involving nine or more contract units (whether or not completed in stages):

(i) The owner and the owner's contractors and subcontractors must pay Davis-Bacon

wages to laborers and mechanics employed in development of the housing; and

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

(3) For any project to which labor standards apply, the PHA's written notice to the party that submitted the selected proposal or board resolution approving project-basing of assistance at the specific project, as applicable per § 983.51(f), must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

(d) *Equal employment opportunity.*

Development activity is subject to the Federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

(e) *Accessibility.* As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to development activity. A description of any required work item resulting from these requirements must be included in the Agreement (if applicable), as specified in § 983.154(e)(6) or HAP contract (if applicable), as specified in § 983.157(e)(1).

(f) *Broadband infrastructure.* (1) Any development activity that constitutes substantial rehabilitation as defined by 24 CFR 5.100 of a building with more than four rental units and where the proposal or project selection date or the start of the development activity while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

(2) A description of any required work item resulting from this requirement must be included in the Agreement (if applicable), as specified in

§ 983.154(e)(7) or HAP contract (if applicable), as specified in § 983.157(e)(2).

(g) *Eligibility to participate in Federal programs and activities.* (1) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in development activity or the rehabilitation of units subject to a HAP contract. Both the Agreement (if applicable)

and the HAP contract must include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on such list and are not debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

(2) An owner must disclose any possible conflict of interest that would be a violation of the Agreement (if applicable), the HAP contract, or HUD regulations, in accordance with § 982.161 of this title.