

Chapter 17

PROJECT-BASED VOUCHERS (PBV) AND RENTAL ASSISTANCE DEMONSTRATION UNITS (RAD) (Not Applicable)

PART I: PROJECT BASED-VOUCHERS

17.1.A.INTRODUCTION

The Project-Based Voucher Program was enacted in 1998 as part of the Quality Housing and Work Responsibility Act (QHWRA), with substantial revisions under the FY 2001 Appropriations Act. Based on a proposed rule and public comment, HUD published the Final Rule on November 14, 2005 and amended the rule in July, 2014 and further amended through HOTMA in 2016. Further guidelines for implementation are to be found in PIH Notices 2011-54, 2012-32 rev 3, 2013-11, 2014-17, 2015-5, PIH 2016-17, and HOTMA.

The Program may be administered by Housing Authorities that already administer a Tenant-Based Voucher Program under an Annual Contributions Contract (ACC) with HUD. The significant difference between the programs is that assistance is “attached to the structure” in the Project-Based Program while assistance is considered “portable” in the Tenant-Based Program. Under HUD Regulations at 24 CFR 983, a Housing Authority may commit up to 20% of its budget authority under the ACC to Project-Based Vouchers. Under HOTMA, this has been increased to 30% under specific conditions. Participation is allowed at the discretion of the individual Housing Authority. No additional funding is provided by HUD for the administration of the Program.

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

The WMHA may operate a project-based voucher (PBV) program with up to the maximum twenty percent (20%) of its Housing Choice Voucher Program authority as allowed by HUD. In addition, WMHA will explore the opportunity to increase to 30% under the revised regulations, once HUD places them into final format. In the event HUD increases the level of allowed budget authority that may be used for PBV assistance, the WMHA may increase the PBV program up to the maximum level allowed by HUD.

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

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

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

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

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

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

WMHA will enter into a one to twenty-year HAP contract with the owner(s) of existing housing or newly constructed or rehabilitated housing selected under the Program criteria. The WMHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 20 years if the WMHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. WMHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the WMHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the

time of the extension. In the case of WMHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59

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

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

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

- (1) Provisions on issuance or use of a voucher;
- (2) Provisions on portability;
- (3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option. WMHA may not provide PBV program assistance to these types of housing (24 CFR 983.9)
- (4) Other exceptions as specified in 983.2.

17.1.C. PBV DEFINITIONS [24 CFR 983.3]

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

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

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

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

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

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

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

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

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

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and
- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing credit agency. For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986.

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

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

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

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

WMHA-owned unit. A dwelling unit owned by WMHA that administers the voucher program. WMHA-owned means that WMHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

Project. A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *Contiguous* in this definition includes “adjacent to”, as well as touching along a boundary or a point.

Project-based certificate (PBC) program. The program in which project-based assistance is attached to units pursuant to an Agreement executed by WMHA and owner before January 16, 2001 (see §983.10).

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

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

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

Release of funds (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and §983.58, means that HUD approves the local WMHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the WMHA to execute an “agreement to enter into housing assistance payment contract” (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

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

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

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

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

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

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

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

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

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

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

The following provisions apply to assistance under the PBV program.

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

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

Definitions. See 24 CFR part 5, subpart D.

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

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

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

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

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

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

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

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR part 5, and other federal laws and

regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

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

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

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

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

Protection for victims of domestic violence, dating violence, and stalking. See 24 CFR part 5, subpart L.

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

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

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

Waiver of HUD rules. See 24 CFR 5.110.

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

Under the new § 8(o)(13)(B) of the 1937 Act, WMHA may now project-base up to 20 percent of the WMHA's authorized units, instead of 20 percent of the WMHA's voucher budget authority. However, the WMHA is still responsible for determining the amount of budget authority it has available and ensuring that the amount of assistance that will be attached to the units is available under the ACC, regardless of whether the WMHA has vouchers available for project-basing.

Prior to issuing a request for proposals (RFP) (24 CFR 983.51(b)(1)), selecting a project based on a previous competition (24 CFR 983.51(b)(2)), or selecting a project without following a competition process where the WMHA has ownership interest and is engaged in improving, developing or replacing a public housing property or site, the WMHA must submit to the local field office all the following information (in lieu of following the requirements of 24 CFR 983.6(d)):

1. The total number of units authorized under the Consolidated Annual Contributions Contract (ACC) for the WMHA (excluding those PBV units entirely excluded from

- the cap described below). This number of authorized units includes special-purpose vouchers such as HUD–VASH and Family Unification Program vouchers. The WMHA must also identify the number of PBV units that are excluded from total, if applicable.
2. The total number of units currently committed to PBV (excluding those PBV units entirely excluded from the cap). The number of units “committed to PBV” is comprised of the total number of units that are either (a) currently under PBV HAP contract, (b) under an Agreement to Enter into HAP contract (AHAP), or (c) covered by a notice of proposal selection (24 CFR 983.51(d)). The WMHA must also identify the number of PBV units that are excluded from the total, if applicable. This number must match the number of PBV units excluded from the baseline units (discussed above).
 3. The number of units to which the WMHA is proposing to attach project- based assistance through the new RFP or selection.

The WMHA is no longer required to submit information on funding or available budget authority when submitting information to HUD on its intent to project-base vouchers. However, PHAs are still required to provide this PBV unit information to HUD no later than 14 calendar days prior to the date that the WMHA intends to issue the Request for Proposals (or makes the selection based on a previous competition or noncompetitively as applicable). The WMHA continues to submit the required information electronically to the HUD field office by sending an email to pbvsubmission@hud.gov. The WMHA must also copy their local HUD Office of Public Housing Director on its email submission.

HOTMA further allows WMHA to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of the following categories:

1. 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.
2. The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The WMHA may further define “veteran” for purposes of determining if the units are eligible for this exception. For example, WMHA could require that the veteran must be eligible to receive supportive services from the Department of Veterans Affairs or require that the veteran was not dishonorably discharged. WMHA requires that the veteran was not dishonorably discharged.

3. The units provide supportive housing to persons with disabilities or to elderly persons. The definitions of a person with disabilities and an elderly person are found at 24 CFR 5.403. Supportive housing means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):
- a. meal service adequate to meet nutritional need,
 - b. housekeeping aid,
 - c. personal assistance,
 - d. transportation services;
 - e. health-related services;
 - f. educational and employment services; or
 - g. other services designed to help the recipient live in the community as independently as possible.

WMHA must include in the WMHA administrative plan the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. WMHA may not require participation as a condition of living in an excepted unit, although such services may be offered.

Note that in accordance with 24 CFR 983.354, with the exception of an assisted living facility, the owner of a PBV project may not require the assisted family to pay charges for meals or supportive services, and non-payment of such charges by the family is not grounds for termination of tenancy. In the case of an assisted living facility (as defined in § 983.3) receiving PBV assistance, owners may charge families for meals or supportive services. These charges may not be included in the rent to owner or the calculation of reasonable rent.

4. The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

These categories are those under which a WMHA is permitted to project- base an additional 10 percent of its units above the normally applicable 20 percent PBV program limitation. These categories are separate and distinct from exceptions to the income-mixing requirements that limit the number and percentage of units within a particular project to which PBV assistance may be attached (no more than the greater of 25 units or 25 percent of the units), which is discussed later in this document.

If WMHA wishes to add PBV units under this exception authority, the WMHA must submit the same information to the Field Office, and identify the exception category (or categories) for which the WMHA will project-base additional units (up to an additional 10 percent above the

normally applicable PBV program limitation) and the specific number of units that qualify under the exception category.

PBV units may only be covered by this 10 percent exception authority if the PBV HAP contract was first executed on or after the effective date of the January 18, 2017 notice.

17.1.F. UNIFORM RELOCATION ACT [24 CFR 983.7]

All households displaced as a result of the Agreement or HAP contract must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

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

The WMHA must require the owner to comply with the URA and 49 CFR part 24. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the WMHA.

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

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

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

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

(2) ***Selection based on previous competition.*** The WMHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

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

WMHA notice of owner selection. The WMHA 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.

WMHA-owned units. WMHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the WMHA-owned units were appropriately selected based on the selection procedures specified in the WMHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit. PBV may be used in the conversion of Public Housing to the PBV Program under RAD.

Public review of WMHA selection decision documentation. The WMHA must make documentation available for public inspection regarding the basis for the WMHA selection of a PBV proposal. Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.

Other Criteria

The WMHA, WMHA-affiliates, or developers engaged by the WMHA to redevelop WMHA property, may submit PBV proposals and be awarded vouchers under any RFP published by the WMHA or be awarded vouchers if the proposed project was competitively selected under another federal, state, or local housing assistance program in accordance with 24 CFR 983.51(b)(2). Proposals submitted by the WMHA, an WMHA-affiliate, or developer engaged by the WMHA to redevelop public housing, must conform to the submission guidelines stated in the full RFP document and shall be evaluated under the same selection criteria as all other

proposals. No WMHA, or WMHA-affiliate, employee responsible for preparing the response to the RFP shall be involved in the evaluation or selection of proposals or the award of the vouchers. Provided, however, that any selection process for WMHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

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

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

Selection Criteria

Proposals will be selected according to the following selection criteria:

- The housing must promote one of WMHA's priorities for its PBV program;
- The proposal must comply with all HUD program regulations and requirements;
- The property must be eligible housing in accordance with 24 CFR 983.53 and 983.54.
- The proposal must comply with the HUD cap on PBV units per project at 24 CFR 983.56;
- The housing site must meet the site selection standards detailed at 24 CFR 983.57;
- Proposals for new construction or rehabilitation projects must demonstrate capacity, experience, and successful outcomes in prior projects that indicate their ability to complete the construction work effectively and within the proposed schedule;
- Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low income persons and families;
- Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services. More detailed information about minimum supportive services guidelines is provided later in this addendum.
- Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project's long-term viability.
- The owner is good standing with HUD and WMHA.

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

Housing Types

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

Existing housing—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of WMHA selection the units substantially comply with HQS.

- (1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.
- (2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

New Construction or Rehabilitated Housing as found in 983 Subpart D

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

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

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

Prohibition against assistance for owner-occupied unit. The WMHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

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

Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP. The WMHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in §983.152 after proposal submission and prior to execution of an AHAP

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

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, WMHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (g) A Section 202 project for elderly or non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, (12 U.S.C. 1701q);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (j) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);
- (l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by WMHA in accordance with HUD requirements. For this purpose, “housing subsidy” does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

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

Subsidy layering requirements. The WMHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which

included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

When subsidy layering review is conducted. The WMHA may not enter into an Agreement or HAP contract 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.

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

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

Greater of 25 units or 25 percent per project cap. Except as provided in the regulations, HOTMA and RAD conditions, WMHA will not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in a project.

Excepted Units.

Units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:

1. Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).
2. Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit

Families eligible for supportive services under this exception to the project cap would include families with a household member with a disability, among other populations. Such supportive services need not be provided by the owner or on-site, but 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. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.

A WMHA may not require participation in the supportive services as a condition of living in an excepted unit, although such services may be offered. In cases where the unit is excepted because of FSS supportive services or any other supportive services as defined in the WMHA administrative plan, if a family at the time of initial tenancy was eligible for FSS supportive services and successfully completes its FSS contract of participation or the supportive services objective, the unit continues to count as an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.

However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently *is no longer eligible* for the supportive services, the family must vacate the unit within a reasonable period of time established by the WMHA, and the WMHA shall cease paying housing assistance payments on behalf of the ineligible family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract (unless it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 983.207(a)).

3. Projects that are in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

WMHA may only refer qualifying families for occupancy of excepted units under (1) and (2) above.

Grandfathering of Certain Properties. The HOTMA amendments entirely eliminate the statutory exemption from a project cap for projects that serve disabled families and modify the supportive services exception. Previously, the statutory exception required that the family must be actually receiving the supportive services for the individual unit to be exempted from the income-mixing requirement. The new requirement provides that the project must make supportive services available to all assisted families in the project (but that the family does not have to actually accept and receive the supportive services for the exception to apply to the unit). However, projects that are using the former statutory exemptions will continue to operate under the pre- HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the WMHA and the owner agree by mutual consent to change the conditions to the HOTMA requirement. The PBV HAP contract may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (*e.g.*, excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the unit.)

Projects Not Subject to a Project Cap

New language in section 8(o)(13)(D) exempts certain types of units receiving project-based

voucher assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. This exception to the project cap may only be applied to projects that were not already under HAP contract on the effective date of this document. The exception may not be applied retroactively to projects under HAP contract on the effective date of this notice or subsequently applied at the extension of those HAP contracts.

Exception requirements. For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

1. The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice, and
2. In the 5 years prior to the date the WMHA either (i) issued the RFP under which the project was selected or (ii) selected the project without competition, the unit met at least one of the two following conditions:
 - a. The unit received one of the following forms of HUD assistance:
 - Public Housing Capital or Operating Funds (section 9 of the 1937 Act)
 - Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the moderate rehabilitation program, including the SRO program.
 - Housing For the Elderly (section 202 of the Housing Act of 1959).
 - Housing for Persons With Disabilities (section 811 of the Cranston- Gonzalez National Affordable Housing Act).
 - The Rent Supplement program (section 101 of the Housing and Urban Development Act of 1965).
 - Rental Assistance Program (section 236(f)(2) of the National Housing Act); or
 - b. The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:
 - Section 236.
 - Section 221(d)(3) or (d)(4) BMIR.
 - Housing For the Elderly (section 202 of the Housing Act of 1959).
 - Housing for Persons With Disabilities (section 811 of the Cranston- Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance are not covered by this exception. The statute provides that the units must have been receiving “other” project-based assistance provided by the Secretary in order to be covered by the exception authority.

For proposals involving these properties, the standard criteria for selection of projects and the units to which PBV assistance can be applied are still in effect. The only difference is that any PBV assistance provided to these properties may be used to project base up to 100 percent of the units in the project.

Both existing units or units rehabilitated under the PBV program are eligible for this project cap exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the WMHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

PBV New Construction Units that Qualify for the Exception as Replacement Housing.

For purposes of this document, the PBV new construction unit must meet the following requirements in order to be a replacement unit and qualify for the project cap exception (these are the same conditions that apply for units to qualify as replacement units for purposes of the exception to the PBV Program unit limit under section C.2.C of this document above):

The unit which the PBV new construction unit is replacing (i.e., the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above within 5 years from the date the WMHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project under a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection is the date of the WMHA notice of owner selection (24 CFR 983.51(d)).

The newly constructed unit is located on the same site as the unit it is replacing. (An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as new project is generally located at the same site as the original project for purposes of this requirement.)

One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least one of the following:

Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

Unit size configuration and number of units.

The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the project cap exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the project cap in this example would be 40 units, and the remaining 10 PBV units would be subject to the project cap and would need to qualify for an exception on the basis of another exception category.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

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

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

Qualifying Supportive Services

Qualifying and Supportive services include an array of activities to transition families to a better quality of life or movement to self-sufficiency including but not limited to:

- Participation in any of the WMHA’s Housing Choice Voucher Program FSS programs
- Child care – child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;
- Transportation – transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;
- Education – remedial education; education for completion of secondary or post-secondary schooling, English as Second Language (ESL) classes;
- Employment – job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;
- Personal Welfare – substance/alcohol abuse treatment and counseling;

- General health care and services – mental health services; HIV/AIDS related services; behavior assessments
- Household skills and management – training in homemaking and parenting skills; household management; money management; nutrition; obtaining and retaining government, financial and medical benefits; family counseling;
- Legal Services
- Other services – any other services and resources, including case management, or reasonable accommodations for individuals with disabilities, that the WMHA determines to be appropriate in assisting families to achieve economic independence and self-sufficiency.

It is not necessary that the above services be provided by or at the project. However, to qualify for as an “excepted unit” a family must have at least one member receiving at least one qualifying supportive service. Proposals that include supportive services should identify the particular services that will be provided and the service provider(s). WMHA will evaluate proposals including supportive housing units on the basis of the specific services provided, the intensity of the services and the target population to be served. WMHA will also evaluate supportive housing proposals based on the history and track record of the proposed service providers and the need for the supportive housing at the proposed site.

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

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

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

To qualify as an WMHA approved supportive service in excepted units, services must be directed to helping the family achieve the ability to live independently as possible in consideration of their disability. It must be based on case management which accurately assesses family needs, makes appropriate referrals for serving those needs, encourages family participation, and accurately tracks and records family participation and progress on a monthly

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

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

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

At the time of initial lease execution between the family and the owner, the family and WMHA will sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require WMHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

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

Family Responsibility

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

At the family's annual income recertification, WMHA will require written documentation from the service provider or the owner indicating the family's continued compliance with the terms of the supportive services plans. Project owners will also be expected to provide some level of monitoring of the services provided. This monitoring should be detailed in the proposal, and will

be evaluated as part of the selection process. At WMHA's discretion, WMHA may request additional documentation of compliance with supportive service obligations.

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

Family Failure to Comply with Supportive Service Requirements

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

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

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

WMHA will not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless WMHA has determined that:

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

- (a) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- (b) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
- (c) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

- (d) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
- (e) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
- (f) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, WMHA will consider whether in the past five years there has been an overall decline in the poverty rate;
- (g) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site meets the HQS site standards at 24 CFR 982.401(1).

(4) The site selection will meet AFFH conditions and goals.

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

- (1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)
- (2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
- (3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- (4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the

elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

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

- (1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- (2) The site must not be located in an area of minority concentration, except as permitted under paragraph (3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- (3) A project may be located in an area of minority concentration only if:
 - (a) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or
 - (b) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi) of this section for further guidance on this criterion).
 - (c) As used in paragraph (3)(i) of this section, "sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.
 - (d) Units may be considered "comparable opportunities," as used in paragraph (3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.
 - (e) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of

housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

- A significant number of assisted housing units are available outside areas of minority concentration.
- There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
- There are racially integrated neighborhoods in the locality.
- Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
- Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
- A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
- Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

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

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

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

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

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

17.1.M. ENVIRONMENTAL REVIEW [24 CFR 983.58]

Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The City, County or HUD is the “responsible entity” or “RE” responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6. If WMHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself. (24 CFR 58.11).

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

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

- (1) The RE has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds;
- (2) The RE has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- (3) HUD has performed an environmental review under 24 CFR part 50 and has notified WMHA in writing of environmental approval of the site.

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

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

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

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

- (1) *Determination of rent to owner for the WMHA-owned units.*** Rent to owner for WMHA-owned units is determined pursuant to Sec. 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser;
- (2) *Initial and renewal HAP contract term.*** The term of the HAP contract and any HAP contract renewal for WMHA-owned units must be agreed upon by the WMHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the WMHA; and
- (3) *Inspection of WMHA-owned units*** as required by Sec. 983.103(f).

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

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

Attaching PBVs to Structures Owned by PHAs

The new section 8(o)(13)(N) allows WMHA to attach PBVs to projects in which the WMHA has an ownership interest or has control of, without following a competitive process, in cases where the WMHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The WMHA's ownership interest does not have to meet the definition of the term "owned by a PHA" established by section 105 of HOTMA. For purposes of this section, an ownership interest means that the WMHA or its officers, employees, or agents are in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; a stockholder; a member, or general or limited partner; or a member of a limited liability corporation. These PBV projects are still subject to all other applicable PBV requirements.

In order to be subject to this non-competitive exception, the WMHA must be planning rehabilitation or construction on the project with a minimum of \$25,000 per unit in hard costs. The WMHA must detail in its PHA administrative plan what work it plans to do on the property or site and how many units of PBV it is planning on adding to the site.

This section overrides the regulatory requirements for selection of PBV proposals at 24 CFR 983.51(b)

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

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

HQS for special housing types. For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982 apply to the PBV program.

Lead-based paint requirements. The lead-based paint requirements at Sec. 982.401(j) do not apply to the PBV program. 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. HUD issues new guidance on lead-based paint that the WMHA will follow.

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

Minimum Standards. HQS establishes the minimum federal housing quality standards for PBV housing. However, WMHA may elect to establish additional requirements for quality,

architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement.

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

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. WMHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C. Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.

17.1.Q. INSPECTING UNITS [24 CFR 983.103]

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

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

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

Annual/Biennial inspections. At least annually/biennially during the term of the HAP contract, WMHA will inspect a random sample, consisting of at least 20 percent of the contract units in each **building** to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a **building** fail the initial inspection, WMHA will re-inspect 100 percent of the contract units in the building.

Other inspections. WMHA may inspect contract units whenever it determines an inspection is needed to comply with the HQS and that the owner is providing maintenance, utilities, and other

services in accordance with the HAP contract. WMHA will take into account complaints from residents and any other information coming to its attention in scheduling inspections.

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

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

Inspecting WMHA-owned units. In the case of WMHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance the above section on WMHA-owned units (24 CFR 983.59). The independent entity must furnish a copy of each inspection report to WMHA and to the HUD field office where the project is located. WMHA will take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by WMHA as owner.

Mixed-finance properties. In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the WMHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

17.1.R. SUBPART D- REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS

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

The Agreement to Enter into a HAP Contract (24 CFR 983.152 - 983.154)

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

Commencement of construction or rehabilitation. The WMHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing or rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

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

1. Site description;
2. Location of contract units on site;
3. Number of contract units by area (square feet) and number of bedrooms and bathrooms;
4. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement,
7. Estimated initial rents to owner for the contract units;
8. Anticipated term of the initial HAP contract
9. Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the site plan and rehabilitation work write up and, where determined necessary by the WMHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications. At a minimum, the housing must comply with the HQS. WMHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.
10. Deadlines for completion by the owner, and for the owner to submit the required evidence of completion.

When an Agreement is Executed

The agreement must be promptly executed, in accordance with the following conditions:

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

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

(c) *Prohibition on construction or rehabilitation.* The WMHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission.

Conduct of Development Work (24 CFR 983.154)

The development will comply with conditions under the conduct of development work in the regulations.

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

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

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

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

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

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

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

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

- 1) WMHA will inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by WMHA under the Agreement.
- 2) WMHA will determine if the owner has submitted all required evidence of completion.
- 3) If the work has not been completed in accordance with the Agreement, WMHA will not enter into the HAP contract.

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

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

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

17.1.T. THE HAP CONTRACT [24 CFR 983.201 – 983.208]

After WMHA approves and accepts the units, it will enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162). WMHA will makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the contract term.

The HAP contract must specify:

- 1) The total number of contract units by number of bedrooms;
- 2) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- 3) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit.
- 4) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
- 5) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
- 6) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
- 7) The HAP contract term;
- 8) The number of units in any building that will exceed the 25 percent per building cap (as described in Sec. 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and
- 9) The initial rent to owner (for the first 12 months of the HAP contract term).

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

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

In the case of newly constructed or rehabilitated housing the HAP contract must be executed after WMHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion. In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement.

Term of HAP contract. (24 CFR 983.206)
20-year initial term.

The initial HAP Contract term may now be of a period of up to 20 years (instead of the prior 15-year limitation). The length of the term of the initial HAP contract for any HAP contract unit may not be less than one year nor more than 20 years (instead of the prior 15-year limitation on the initial term of the HAP contract). In addition, the WMHA may agree to enter into an extension (at the time of the initial HAP contract execution or any time before the expiration of the contract, for an additional term of up to 20 years (as opposed to the prior 15-year limitation on the term of the contract extension).

A HAP contract extension may not exceed 20 years. The WMHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively PHAs and owners with HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extension) would be 40 years. PHAs and owners with HAP contracts that are no longer in the initial term may mutually agree to extend the HAP contract for a total extension term of 20 years. The maximum term of the HAP contract in that case would be 20 years plus the number of years that constituted the initial term of the HAP contract.

If the project in question is a WMHA-owned project, any change in the initial term and any subsequent extension is also subject to the approval of the independent entity.

This section overrides 24 CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirements related to WMHA-owned units.

WMHA Policy

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

Extension of term.

WMHA Policy

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

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

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

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

The new section 8(o)(13)(F)(i)(I) requires PHAs, in times of insufficient funding, to first take all cost-savings measures prior to failing to make payments under existing PBV HAP contracts (*i.e.*, terminating the HAP contract). If the WMHA has taken all cost-savings measures and still has insufficient funding to make HAPs, it is left up to the discretion of the WMHA to choose to terminate HCV or PBV assistance first. The list of cost-savings measures that must be taken prior to terminating assistance contracts are found in PIH Notice 2011-28.

Termination by Owner--Reduction Below Initial Rent. The owner may terminate the HAP contract, upon notice to the WMHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 CFR 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

Statutory Notice Requirements: Contract Termination or Expiration (24 CFR §983.206)

Notices required in accordance under termination or expiration must be provided in the form prescribed by HUD. Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the WMHA and assisted tenants of the termination. For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner's refusal to renew the HAP contract. If an owner does not give timely notice of termination, 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 an 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.

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

Amendment to Add Contract Units. At the discretion of the WMHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with §983.56(b)), or the 20 percent of authorized budget authority as provided in §983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

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

Condition of Contract Units (24 CFR §983.208)

Owner maintenance and operation. The owner must maintain and operate the contract units and premises in accordance with the 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 WMHA and in the lease with each assisted family.

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

Remedies for HQS violation. The WMHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The WMHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS. If the WMHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the WMHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

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

Additional Units Without Competition.

The new language in section 8(o)(13)(F)(ii) allows PHAs and owners to amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements (see 24 CFR 983.51(b)) for those added PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and the individual project caps, found in sections 8(o)(13)(B) and (D) of the 1937 Act, respectively. Furthermore, prior to attaching additional units without competition, the WMHA must submit to the local field office the information described in section C.2.A above, which pertains to demonstrating the WMHA is able to project-base additional units without exceeding the WMHA program limitation on PBV units. PHAs must also detail their intent to add PBV units in this manner in their administrative plan, along with their rationale for adding PBVs to this specific project. This provision overrides the restriction in 24 CFR 983.207(b) that additional units may only be added to the HAP contract during the three-year period immediately following execution of the HAP contract. All of the other requirements under § 983.207(b) continue to apply

Additional Contract Conditions

The new 8(o)(13)(F)(IV) allows the PBV HAP contract to have additional conditions, including conditions related to continuation, termination, or expiration. HUD is not adding any additional conditions to the PBV HAP contract at this time.

The section further requires that HAP contracts specify that, upon termination or expiration of a contract that is not extended, a family living at the property is entitled to receive a tenant-based voucher (the voucher that was previously providing project-based assistance for the family in the PBV project). The WMHA must provide the family with a voucher and that family must also be given the option by the WMHA and owner to remain in their unit with HCV tenant-based assistance if the unit complies with inspection requirements and rent reasonableness requirements. The family must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount if the unit 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 (for example, the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation 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 WMHA 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.

The statutory owner notice requirements related to the contract termination or expiration at 24 CFR 983.206 continue to apply to the PBV program. If the owner fails to provide timely notice of termination, 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 the rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of the rent. For families that wish to remain at the property, the HCV tenant-based assistance would not commence until the owner's required notice period ends.

17.1.U. OWNER RESPONSIBILITIES AND CERTIFICATIONS [24 CFR 983.209-983.210]

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

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

- a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
- b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

- c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the WMHA, and the lease is in accordance with the HAP contract and HUD requirements.
- d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f) The amount of the housing assistance payment is the correct amount due under the HAP contract.
- g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the WMHA, HUD, or any other public or private source) for rental of the contract unit.
- i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
- j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

Removal of the Unit From HAP Contract (24 CFR §983.211)

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

If the project is fully assisted, the WMHA may reinstate the unit removed to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, the WMHA may substitute a different unit for the unit removed to the HAP contract when the first eligible substitute becomes available.

A reinstatement or substitution of units under the HAP contract, must be permissible under §983.207. The anniversary and expirations dates of the HAP contract for the unit must be the

same as it was when it was originally placed under the HAP contract. The WMHA must refer eligible families to the owner in accordance with the WMHA's selection policies.

17.1.V. TENANT SELECTION [24 CFR 983.251]

WMHA may select families who are participants in the WMHA's tenant-based voucher program and families who have applied for admission to the voucher program- including the PBV Program. Except for voucher participants (determined eligible at original admission to the voucher program), the WMHA may only select families determined eligible for admission at commencement of PBV assistance. The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program. WMHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the WMHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

As with the tenant based program, not less than 75 percent of the families admitted to WMHA's tenant based and project-based voucher programs during the fiscal year from the WMHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) also apply to the total of admissions to the WMHA's tenant based and project-based voucher programs.

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

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

Waiting List Management

The WMHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list (centralized) for the WMHA's whole PBV

program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

WMHA will establish a **centralized** waiting lists for each PBV project selected. WMHA will allow a site based waiting list for the Mountain View Village.

WMHA may place families referred by the PBV owner/management entity on its PBV waiting list.

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

WMHA will open and close the centralized waiting list pursuant to the procedures outlined in Administrative Plan.

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

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

WMHA Policy

WMHA will offer families the next available unit in the PBV Program when they are at the top of the waiting list. Families will be made one offer, and if the offer is rejected, the application will be re-dated and moved to the bottom of the waiting list. When the family gets to the top of the waiting list a second time, they will be offered the next available unit, and if the family rejects the second unit, they will be removed from the project-based voucher central waiting list. Exception to the above may be allowed for reasonable accommodation or VAWA.

Families for properties that contain LIHTC funding must meet the eligibility requirements of the LIHTC Program.

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

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

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

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

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

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

Preferences/Site Specific Requirements

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

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

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

WMHA will have site specific requirements for each site and will be posted at the admission office and at the site. It will include additional supportive services requirements.

Supportive Housing for Disability

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

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

- Families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing
- Families that without appropriate supportive services will not be able to obtain or maintain themselves in housing
- Families for whom such services cannot be provided in a non-segregated setting.

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

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

Tenant Selection

In referring families to the owner for admission to excepted units, the WMHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

When notified of a vacancy in a PBV unit, WMHA will refer tenants from the site specific waiting list based on bedroom size in the following order:

First, applicants that meet the time and date of application and any priority.

Second, applicants that meet the any criteria set forth in this Administrative Plan based on time and date of application and any priority.

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

WMHA Information for Accepted Family.

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

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

(2) Family and owner responsibilities.

Information packet. The WMHA must give the family a packet that includes information on the following subjects:

- (1) How the WMHA determines the total tenant payment for a family;
- (2) Family obligations under the program; and
- (3) Applicable fair housing information.

Providing information for persons with disabilities. If the family head or spouse is a disabled person, the WMHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats. The WMHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

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

Tenant Screening

WMHA option. The WMHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the WMHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening. The WMHA will provide additional information to Managers of WMHA owned or substantial controlled units in accordance with the Administrative Plan.

The WMHA must conduct any such screening of applicants in accordance with policies stated in the WMHA administrative plan.

Owner responsibility. The owner is responsible for screening and selection of the family to occupy the owner's unit. The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

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

- Compliance with other essential conditions of tenancy;

Providing tenant information to owner. The WMHA must give the owner:

- The family's current and prior address (as shown in the WMHA records); and
- The name and address (if known to the WMHA) of the landlord at the family's current and any prior address.

When a family wants to lease a dwelling unit, the WMHA may offer the owner other information in the WMHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The WMHA will provide additional information upon written request by the owner.

WMHA must give the family a description of the WMHA policy on providing information to owners. The WMHA policy must provide that the WMHA will give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

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

Leasing of contract units. (24CFR §983.253)

Owner selection of tenants. During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the WMHA from the WMHA waiting list. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

Size of unit. The contract unit leased to each family must be appropriate for the size of the family under the WMHA's subsidy standards.

Vacancies. 24 CFR §983.254

Filling vacant units. The owner must promptly notify the WMHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the WMHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on the WMHA

waiting list referred by the WMHA. The WMHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

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

Lease. (24CFR §983.256)

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

Form of lease. The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in the lease addendum and regulations. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as the WMHA model lease. In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

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

Required information. The lease must specify all of the following:

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

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

- The program tenancy requirements (as specified in this part);
- The composition of the household as approved by the WMHA (names of family members and any WMHA-approved live-in aide).

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

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

The owner must notify the WMHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the WMHA and in accordance with the terms of the lease relating to its amendment. The WMHA must redetermine reasonable rent, in accordance with §983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

Term of lease. (1) The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

- For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
- For automatic indefinite extension of the lease term.

The term of the lease terminates if any of the following occurs:

- The owner terminates the lease for good cause;
- The tenant terminates the lease;
- The owner and the tenant agree to terminate the lease;
- The WMHA terminates the HAP contract; or
- The WMHA terminates assistance for the family.

Lease provisions governing absence from the unit. The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by WMHA policy. (WMHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

Owner termination of tenancy and eviction. 24 CFR §983.257

In general, 24 CFR 982.310 applies with the exception that §982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. Part 5, subpart L of 24 CFR, on protection for victims of domestic violence, dating violence, or stalking applies to the PBV Program.

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

Continuation of housing assistance payments. 24 CFR§983.258

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the WMHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to §983.211

Security deposit: amounts owed by tenant. 24 CFR§983.259

The owner may collect a security deposit from the tenant. The WMHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease. 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 is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the WMHA has no liability or responsibility for payment of any amount owed by the family to the owner.

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

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

- (1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the WMHA must promptly notify the family and the owner of this determination, and of the WMHA's offer of continued assistance in another unit pursuant to the regulations.

WMHA offer of continued assistance. If a family is occupying a:

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

The WMHA policy on such continued housing assistance is stated in the administrative plan and may be in the form of:

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

WMHA termination of housing assistance payments. If the WMHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the WMHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the WMHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the WMHA must remove the unit from the HAP contract.

If the WMHA offers the family the opportunity for another form of continued housing assistance in accordance with the regulations (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within 30 days as determined by the WMHA, or both, the WMHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the WMHA, and remove the unit from the HAP contract.

Family Right to Move (24CFR§983.261)

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

WMHA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the WMHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance. Before providing notice to terminate the lease, a family must contact the WMHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the WMHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

When occupancy may exceed 25 percent cap on the number of PBV units in each project. (24 CFR§983.262)

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

In referring families to the owner for admission to excepted units, the WMHA must give preference to elderly and/or to families receiving supportive 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 service as defined in the WMHA 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.

A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the WMHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the WMHA does not exercise its discretion must vacate the unit within a reasonable period of time established by the WMHA, and the WMHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with §983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the WMHA.

The WMHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances

beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family.

Inspections

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

- Pre-Selection. For new construction or rehabilitated units, the WMHA will inspect the site prior to making the proposal selection. For existing housing, all units must substantially comply with HQS prior to proposal selection.
- Prior to entering the HAP Contract. All units must fully comply with HQS standards prior to executing the HAP Contract.
- Turnover. Each time a family moves out of a PBV unit, the WMHA will inspect the unit before providing assistance to a new family.
- Annual/Biennial Inspections. The WMHA will inspect at least 20% of the contract units in each building, turnover inspections are not counted towards meeting the 20%. If more than 20% of the inspected units fail inspection, the WMHA must re-inspect all units in the building.
- As needed. The WMHA will inspect units as needed to ensure that the units comply with HQS. The WMHA will take into account complaints and other information when scheduling inspections.

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

Rent

Rent to the owner shall be set in accordance with 24 CFR 983.301, such that the initial rent shall not exceed:

- 1) 110% of the applicable fair market rent for the unit minus the utility allowance;
- 2) the reasonable rent; or
- 3) the rent requested by the owner.

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

The WMHA shall not make vacancy payments for units that are unoccupied beyond the month of move-out. Owners may request vacancy payments for the month of move out provided that

the owner properly notifies the WMHA of the vacancy and provided that the vacancy was not caused by any action of the owner.

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

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

17.1.W. RENTAL ASSISTANCE DEMONSTRATION PROGRAM (PIH 2019-23 REV 4)

WMHA is undertaking the opportunity to convert the public housing inventory to the PBV program, and if so, will use the following policies in the conversion and thereafter.

Special Provisions Affecting Conversions to PBVs

Under the Demonstration, HUD has the authority to waive statutory and regulatory provisions governing the PBV program, or to establish alternative requirements for the effective conversion of assistance. Additionally, the RAD Statute imposes certain unique requirements and authorizes HUD to establish requirements for converted assistance under the Demonstration.

Listed below are the "special" requirements applicable to public housing projects converting assistance to long-term PBV assistance under the public housing conversion to RAD, with reference to the affected statute and/or regulation, where applicable. Special requirements are grouped into four categories: Project Selection, Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. All other regulatory and statutory requirements of the PBV program in 24 CFR part 983 and section 8(o)(13) of the Act apply, including environmental review, lead-based paint requirements, Davis-Bacon, and fair housing requirements.

MTW agencies will be able to apply activities impacting the PBV program that are approved in its MTW Plan to these properties as long as they do not conflict with RAD requirements. RAD requirements include RAD statutory requirements, provisions of the PBV program specifically addressed in PIH 2019-23 rev 4 (including provisions explicitly listed in Section 1.6 of PIH 2019-23 rev 4 as provisions of the PBV program that MTW agencies may not alter under RAD), other conditions and requirements of PIH 2019-23 rev 4, or RAD contract forms or riders. With respect to any existing PBV regulations that are waived or modified in this Section 1.6 pursuant to RAD authority, except where explicitly noted below, MTW agencies may modify these or other requirements of the PBV program if the activity is approved in its MTW Plan. All other RAD Requirements listed below or elsewhere in PIH 2019-23 rev 4 shall apply to MTW agencies.

A. PBV Project Selection.

- 1. PBV Percentage Limitation.** Covered Projects do not count against the percentage limitation applicable to the PBV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6 with respect to Covered Projects. As a result, the WMHA that is administering RAD PBV assistance does not take the RAD PBV into consideration when calculating the percent limitation for any non-RAD PBV actions that are subject to the percent limitation. In other words, RAD PBV is excluded from both the numerator and the denominator when calculating the percent that may be project-based for non-RAD PBV.
- 2. Cap on the Number of PBV Units in Each Project.** There is no cap on the number of units that may receive PBV assistance in each project. To implement these provisions, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(b), 983.262(a) and (d).
- 3. Owner Proposal Selection Procedures.** HUD is waiving 24 CFR § 983.51. With respect to site selection standards, HUD requires compliance with the site selection standards as set forth in PIH 2019-23 rev 4.
- 4. Site selection – Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c)(2).** HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

B. PBV Contract Terms.

- 1. Length of Contract.** Covered Projects shall have an initial HAP Contract term of at least 15 years (up to 20 years upon request of the Project Owner and with approval by the administering Voucher Agency). To implement this provision, HUD is specifying alternative requirements for section 8(o)(13)(F) of the Act (which establishes a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term). Project Owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the contract and may not reduce the number of assisted units without HUD approval. Any HUD approval of the WMHA's request post-conversion to reduce the number of assisted units under the contract is subject to conditions that HUD may impose and is reviewed by HUD in the regular course of administration of the PBV program. MTW agencies may not alter this requirement.

- 2. Mandatory Contract Renewal.** In accordance with the RAD Statute, upon expiration of the initial contract and each renewal contract, the administering Voucher Agency must offer, and the Project Owner must accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently, section 8(o)(13)(G) of the Act, as well as 24 CFR § 983.205(b), governing the WMHA’s discretion to renew the contract, will not apply to the extent that these provisions make renewal or extension decisions purely discretionary. However, Contract Administrators and Project Owners may choose to extend the initial HAP Contract term consistent with these provisions. The ability to extend the HAP Contract term consistent with these provisions does not negate, in any way, the mandatory renewal provision. MTW agencies may not alter this requirement.
- 3. Ownership or Control.** This section has been moved to Section 1.4.A.11 of the PIH 2019-23 rev 4, and further conditioned on changes in the definition allowed by HOTMA.
- 4. RAD Use Agreement.** Pursuant to the RAD Statute, a Covered Project shall have an initial RAD Use Agreement that will:

 - i.** Be recorded in a superior position to all liens on the property. The Use Agreement shall be recorded prior to the Security Instrument or any other mortgage or security instrument relating to an FHA-insured loan or a Risk-share loan;
 - ii.** Run until the conclusion of the initial term of the HAP Contract, automatically renew upon extension or renewal of the HAP Contract for a term that coincides with the renewal term of the HAP Contract, and remain in effect even in the case of abatement or termination of the HAP Contract (for the term the HAP Contract would have run, absent the abatement or termination), unless the Secretary approves termination of the RAD Use Agreement in the case of a transfer of assistance;
 - iii.** Provide that in the event that the HAP Contract is removed due to breach, non-compliance or insufficiency of Appropriations, for all units previously covered under the HAP Contract new tenants must have incomes at or below eighty percent (80%) of the area median income (AMI) at the time of admission and rents may not exceed thirty percent (30%) of eighty percent

(80%) of AMI for an appropriate-size unit for the remainder of the term of the RAD Use Agreement; and

- iv. Require compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing

5. Initial Contract Rent Setting. HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) All RAD applications, including applications for Portfolio or Multi-phase awards, will have initial contract rents based on their "RAD rent base year:"

- All properties awarded under the original 60,000 unit cap have initial contract rents based on FY 2012 funding levels ("FY 12 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 14 and established in the HAP Contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2012 funding, with an OCAF adjustment for both 2014 and 2015.
- All properties awarded above HUD's original 60,000 unit cap but subject to the increased 185,000 cap in effect as of the date of PIH 2019-23 rev 4 will have initial contract rents based on FY 2014 funding levels ("FY 14 RAD rent base year"). These rents will be adjusted each year by HUD's published OCAF starting in CY 15 and established in the HAP Contracts at the time of conversion. Thus, for a project in this category that closes in 2015, the initial contract rents will be based on 2014 funding, with an OCAF adjustment for 2015.
- Subsequent to authority to convert additional units, properties will have initial contract rents based on a future RAD rent base year in HUD's sole discretion.

WMHA has additional discretion in establishing initial contract rents using the following flexibilities:

- i. **MTW Fungibility.** MTW agencies may use their MTW block grant funds to set their initial contract rents, subject to applicable program caps. The agency must use existing voucher funding to supplement rents; no additional voucher funding will be provided. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 2013-02, or successor notice.

- ii. **Rent Bundling.** WMHA may adjust subsidy (and initial contract rents) across multiple projects as long as the WMHA does not exceed the aggregate subsidy for all of the projects the WMHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when the WMHA submits applications for two or more projects. There is no limit to the number of projects that the WMHA may bundle. The conversion of the donor property must close prior to or simultaneous with the conversion of the recipient property.

For example, assume that the WMHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500; and in Project B, the contract rent is \$600. The WMHA could bundle the two projects such that the initial contract rents for both projects will be \$550.

See Section 1.9 of PIH 2019-23 rev 4 for instructions on submitting applications with bundled rents.

- iii. **Future Replacement Housing Factor (RHF) or Demolition Disposition Transition Funding (DDTF).** PHAs that are scheduled to receive ongoing RHF or DDTF funding (funds that have not been awarded and, with HUD permission, funds that have been awarded but not yet disbursed) may choose to forgo any ongoing RHF or DDTF grants for the purpose of offsetting an increase to the RAD rent. See Attachment 1C of PIH Notice 2013-32 rev 3 for the calculation of how RHF or DDTF funding may offset increased RAD rent.

Notwithstanding HUD’s calculation or the above-mentioned flexibilities, initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 CFR § 983.301), (except where alternative rent caps have been approved in a MTW Plan). To this effect, initial contract rents cannot exceed the lower of: (a) the reasonable rent (as defined under 24 CFR § 983.303); (b) an amount determined by the WMHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard, or rent cap approved in an MTW Plan), minus any utility allowance; or (c) the rent requested by the owner.

- 6. **Method of Adjusting Contract Rents.** Contract rents will be adjusted only by HUD’s OCAF at each anniversary of the HAP Contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the Act and 24 CFR §§ 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable

rent charged for comparable unassisted units in the private market, as determined by the Contract Administrator in accordance with 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP Contract. MTW agencies may not alter this requirement.

7. **Transfer of Assistance.** This section has been moved to Section 1.4.A.12 of PIH 2019-23 rev 4.

8. **Agreement Waiver and RAD Rehab Assistance Payments.** For public housing conversions to PBV there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the AHAP, including regulations under 24 CFR part 983 subpart D are waived. Instead, the WMHA and Project Owner typically will enter into a HAP Contract before construction begins. Until the work is complete, standard HAP Contract funding procedures will be used for occupied units. Units that are not occupied at any point during the period of work identified in the approved Financing Plan and RAD Conversion Commitment may be eligible, subject to the conditions below, for Rehab Assistance Payments equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents. During the period of rehabilitation or construction as identified in the RCC and the HAP Contract, the maximum number of units for which a Project Owner can receive RAD Rehab Assistance Payments is limited to the number of units eligible for Operating Fund or Capital Fund subsidy prior to conversion. As a result, some units in the Covered Project may not be eligible for Rehab Assistance Payments.

Following the earlier of the end of the construction period identified in the HUD-approved Financing Plan or actual construction, the WMHA will no longer be eligible to receive RAD Rehab Assistance Payments, and all units under contract will be eligible for payment only for occupied units or for vacancy payments, as applicable. MTW agencies may not alter this requirement.

9. **HQS Inspections.** Under current regulations at 24 CFR § 983.103(b) a unit covered under a HAP Contract must be inspected and must meet HQS before assistance can be paid on behalf of a household. In addition, section 8(o)(8)(A) of the Act provides that HAP Contract units must be inspected to ensure compliance with HQS prior to payment of any assistance on behalf of a family. When Work is occurring under RAD, HUD requires that all units meet HQS no later than the date of completion of the Work as indicated in the RCC. Consequently, HUD is waiving and establishing an

alternative requirement to 24 CFR § 983.103(b) and section 8(o)(8)(A) of the Act in such cases.

10. Floating Units. For mixed-income Converting Projects where WMHA is currently exercising their discretion to allow subsidized units to float within a project redeveloped with funding under a Choice Neighborhoods Implementation or HOPE VI grant, or as part of a Mixed-Finance project, upon the request of the Voucher Agency that will administer the Covered Project, HUD will permit PBV assistance to float among units within the project having the same bedroom size. A unit to which assistance is floated must be comparable in condition to the unit it is replacing (i.e., the unit must be of the same quality and amenities as the unit it is replacing). Assistance may float from a Section 504 accessible unit only to another Section 504 accessible unit that has the same bedroom size and accessibility features. Units that float are not specifically designated under the HAP Contract. Therefore, the requirements in 24 CFR § 983.203(c) that the HAP Contract provide “the location of each contract unit” and “the area of each contract unit” are waived. Instead, the HAP Contract must specify the number and type of units in the property that are designated as RAD units, including any excepted units. From the time of the initial execution of the PBV RAD HAP Contract, the property must maintain the same number and type of RAD units, including the same number and type of Section 504 accessible units. Floating units are subject to all of the requirements in PIH 2019-23 rev 4 and the PBV regulations, including physical inspections, rent adjustments, and income-mixing requirements. The alternative requirements with respect to floating units do not apply to non-RAD PBV units.

C. PBV Resident Rights and Participation.

1. No Rescreening of Tenants upon Conversion. Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified in PIH 2019-23 rev 4 (e.g., rent Phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR §

- 982.201, concerning eligibility and targeting of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family. MTW agencies may not alter this requirement. Further, so as to facilitate the right to return to the assisted property, this provision shall apply to current public housing residents of the Converting Project that will reside in non-RAD PBV units or non-RAD PBRA units placed in a project that contain RAD PBV units or RAD PBRA units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR § 983 for non-RAD PBV units and the PBRA requirements governing the applicable contract for non-RAD PBRA units.
2. **Right to Return.** See section 1.4.A.5(ii) of PIH 2019-23 rev 4 and the RAD Fair Housing, Civil Rights, and Relocation Notice regarding a resident's right to return.
 3. **Renewal of Lease.** Since publication of the PIH Notice 2012-32 Rev 1, the regulations under 24 CFR part 983 have been amended requiring Project Owners to renew all leases upon lease expiration, unless cause exists. MTW agencies may not alter this requirement.
 4. **Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is specifying alternative requirements for section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) to the extent necessary to allow for the Phase-in of tenant rent increases. The WMHA must create a policy setting the length of the phase-in period at three years, five years or a combination depending on circumstances. For example, the WMHA may create a policy that uses a three-year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

WMHA Policy:

WMHA shall use a 3-year phase-in for all qualified families eligible for the phase-in

The method described below explains the set percentage-based phase-in the WMHA must follow according to the Phase-in period established. For purposes of this section "Calculated PBV TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058. If a family in a project converting from Public Housing to PBV was paying a flat rent immediately prior to conversion, the WMHA should use the flat rent amount to calculate the Phase-in amount for Year

1, as illustrated below.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the Calculated PBV TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full Calculated PBV TTP

For example, where a resident's most recently paid TTP is \$100, but the Calculated PBV TTP is \$200 and remains \$200 for the period of the resident's occupancy, (i.e. no changes in income) the resident would continue to pay the same rent and utilities for which it was responsible prior to conversion. At the first recertification following conversion, the resident's contribution would increase by 33% of \$100 to \$133. At the second AR, the resident's contribution would increase by 50% of the \$66 differential to the standard TPP, increasing to \$166. At the third AR, the resident's contribution would increase to \$200 and the resident would continue to pay the Calculated PBV TTP for the duration of their tenancy.

In either the three-year phase-in or the five-year phase-in, once the Calculated PBV TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward. MTW agencies must also implement a three or five-year phase-in for impacted residents, but may alter the terms above as long as it establishes a written policy setting forth the alternative terms.

- 5. Family Self Sufficiency (FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Public Housing residents that are currently FSS participants will continue to be eligible for FSS once their housing is converted under RAD. The WMHA may continue to use any FSS funds already awarded to serve those FSS participants who live in units converted by RAD. At the completion of the FSS grant, WMHA should follow the normal closeout procedures outlined in the grant agreement. If the WMHA continues to run an FSS program that serves PH and/or HCV participants, the WMHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding and may use that funding to serve PH, HCV and/or PBRA participants in its FSS program. Due to the program merger

between PH FSS and HCV FSS that took place pursuant to the FY14 Appropriations Act (and was continued in the subsequent Appropriation Acts), no special provisions are required to continue serving FSS participants that live in public housing units converting to PBV under RAD.

However, WMHA should note that there are certain FSS requirements (e.g., escrow calculation and escrow forfeitures) that apply differently depending on whether the FSS participant is a participant under the HCV program or a public housing resident, and WMHA must follow such requirements accordingly. WMHA will be required to administer the FSS program in accordance with FSS regulations at 24 CFR part 984, the participants' contracts of participation, and the alternative requirements established in the "Waivers and Alternative Requirements for the FSS Program" Federal Register notice, published on December 29, 2014, at 79 FR 78100. Further, upon conversion to PBV, already escrowed funds for FSS participants shall be transferred into the HCV escrow account and be considered TBRA funds, thus reverting to the HAP account if forfeited by the FSS participant.

For information on FSS PIC reporting requirements for RAD conversions, see Notice PIH 2016-08 at <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2016-08.pdf>.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future ROSS-SC grants, nor will its residents be eligible to be served by future ROSS-SC grants, which, by statute, can only serve public housing residents. At the completion of the ROSS-SC grant, BHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local Resident Association and this consequence of a RAD conversion may impact those entities.

- 6. Resident Participation and Funding.** In accordance with PIH 2019-23 rev 4 Attachment 1B, residents of Covered Projects with assistance converted to PBV will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
- 7. Resident Procedural Rights.** The following items are incorporated into both the Section 8 Administrative Plan and the Project Owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.

- i. **Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257 related to Project Owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that BHAs provide adequate written notice of termination of the lease which shall be :
 - a. A reasonable period of time, but not to exceed 30 days:
 - i. If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - ii. In the event of any drug-related or violent criminal activity or any felony conviction;
 - b. Not less than 14 days in the case of nonpayment of rent; and
 - c. Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.
- ii. **Grievance Process.** Pursuant to requirements in the RAD Statute, HUD is establishing additional resident procedural rights to comply with section 6 of the Act.

For issues related to tenancy and termination of assistance, PBV program rules require the Project Owner to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will specify alternative requirements for 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, to require that:

- a. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to a Project Owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
 - i. For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program. The hearing officer must be selected in accordance with 24 CFR § 982.555(e)(4)(i).

- ii. For any additional hearings required under RAD, the Project Owner will perform the hearing.
- b. There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or contract administrator.
- c. The Project Owner gives residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
- d. The Project Owner provides opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the WMHA's Section 8 Administrative Plan.

1. **Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent Phase-in, instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited only to persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in 24 CFR § 5.617(b) limiting EID to disabled persons is waived. The waiver, and resulting alternative requirement, apply only to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants that move into the property following conversion or tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion due to loss of employment) is covered by this waiver.

2. **Jobs Plus.** Jobs Plus grantees awarded FY14 and future funds that convert the Jobs Plus target projects(s) under RAD will be able to finish out their Jobs Plus period of performance at that site unless significant relocation and/or change in building occupancy is planned. If either is planned at the Jobs Plus target project(s), HUD may allow for a modification of the Jobs Plus work plan or may, at the Secretary's discretion, choose to end the Jobs Plus program at that project.

- 3. When Total Tenant Payment Exceeds Gross Rent.** Under normal PBV rules, the WMHA may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments (24 CFR § 983.53(c)). Also, the WMHA must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the contract rent, plus any utility allowance, for the unit (i.e., the Gross Rent)) (24 CFR § 983.258). Since the rent limitation under this Section of the Notice may result in a family's TTP equaling or exceeding the gross rent for the unit, for residents living in the Converting Project prior to conversion and who will return to the Covered Project after conversion, HUD is waiving both of these provisions and requiring that the unit for such families be placed on and/or remain under the HAP Contract when TTP equals or exceeds the Gross Rent. Further, HUD is establishing the alternative requirement that until such time that the family's TTP falls below the gross rent, the rent to the owner for the unit will equal the lesser of (a) the family's TTP, less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. When the family's TTP falls below the gross rent, normal PBV rules shall apply. As necessary to implement this alternative provision, HUD is waiving the provisions of Section 8(o)(13)(H) of the Act and the implementing regulations at 24 CFR § 983.301 as modified by Section 1.6.B.5 of PIH 2019-23 rev 4. In such cases, the resident is considered a participant under the program and all of the family obligations and protections under RAD and PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP Contract. The WMHA is required to process these individuals through the Form 50058 submodule in PIC.

Following conversion, 24 CFR § 983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time. Further, the WMHA must remove a unit from the contract when no assistance has been paid for 180 days. If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, HUD is imposing an alternative requirement that the WMHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the WMHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR §983.207 or, where "floating" units have been permitted, Section 1.6.B.10 of PIH 2019-23 rev 4.

4. **Under-Occupied Unit.** If a family is in an under-occupied unit under 24 CFR § 983.260 at the time of conversion, the family may remain in this unit until an appropriate-sized unit becomes available in the Covered Project. When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized unit within a reasonable period of time, as determined by the administering Voucher Agency. In order to allow the family to remain in the under-occupied unit until an appropriate-sized unit becomes available in the Covered Project, 24 CFR § 983.260 is waived. MTW agencies may not modify this requirement.

D. PBV: Other Miscellaneous Provisions

1. **Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** WMHA and the Project Owner must cooperate with any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
2. **Additional Monitoring Requirement.** The Owner must submit to the administering WMHA and the WMHA's Board must approve the operating budget for the Covered Project annually in accordance with HUD requirements.
3. **Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** This section has been moved to 1.4.A.13 and 1.4.A.14. of PIH 2019-23 rev 4.
4. **Establishment of Waiting List.** 24 CFR § 983.251 sets out PBV program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents for the Covered Project will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. The WMHA shall consider the best means to transition applicants from the current public housing waiting list, including:
 - i. Transferring an existing site-based waiting list to a new site-based waiting list.
 - ii. Transferring an existing site-based waiting list to a PBV program-wide or HCV program-wide waiting list.

- iii. Transferring an existing community-wide public housing waiting list to a PBV program-wide or HCV program-wide waiting list, an option particularly relevant for BHAs converting their entire portfolio under RAD.
- iv. Informing applicants on a community-wide public housing waiting list how to transfer their application to one or more newly created site-based waiting lists.

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a Covered Project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the WMHA shall consider transferring such household, consistent with program requirements for administration of waiting lists, to the WMHA's remaining public housing waiting list(s) or to another voucher waiting list, in addition to transferring such household to the waiting list for the Covered Project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait list(s) to which their application was transferred in accordance with the date and time of their application to the original waiting list.

If the WMHA is transferring assistance to another neighborhood and, as a result of the transfer of the waiting list, the applicant would only be eligible for a unit in a location which is materially different from the location to which the applicant applied, the WMHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at other sites.

If using a site-based waiting list, BHAs shall establish a waiting list in accordance with 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the WMHA's public housing community-wide waiting list have been offered placement on the Covered Project's initial waiting list. In all cases, WMHA has the discretion to determine the most appropriate means of informing applicants on the public housing community-wide waiting list given the number of applicants, WMHA resources, and admissions requirements of the projects being converted under RAD. The WMHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area; informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Any activities to contact applicants on the public housing

waiting list must be conducted in accordance with the requirements for effective communication with persons with disabilities at 24 CFR § 8.6 and with the obligation to provide meaningful access for persons with limited English proficiency (LEP).

The WMHA must maintain any site-based waiting list in accordance with all applicable civil rights and fair housing laws and regulations.

To implement this provision, HUD is specifying alternative requirements for 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the WMHA shall administer its waiting list for the Covered Project in accordance with 24 CFR § 983.251(c).

WMHA Policy

WMHA shall use a centralized waiting list and will notify all applicants currently on the waiting list of the opportunity to now participate in the HCV PBV program upon conversion under RAD.

5. **Mandatory Insurance Coverage.** The Covered Project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed project property.
6. **Agreement Waiver.** This section has been moved to 1.6.B.8 of PIH 2019-23 rev 4.
7. **Future Refinancing.** Project Owners must receive HUD approval for any refinancing or restructuring of secured debt during the HAP Contract term to ensure the financing is consistent with long-term preservation of the Covered Project. With respect to any financing contemplated at the time of conversion (including any permanent financing which is a conversion or take-out of construction financing), such consent may be evidenced through the RCC.
8. **Administrative Fees for Public Housing Conversions During the Year of Conversion.** For the remainder of the Calendar Year in which the HAP Contract becomes effective (i.e., the “year of conversion”), RAD PBV projects will be funded with public housing funds. For example, if the project’s assistance converts effective July 1, 2015, the public housing ACC between the WMHA and HUD will be amended to reflect the number of units under HAP Contract, but will be for zero dollars, and the RAD PBV HAP Contract will be funded with public housing money

for July through December 2015. Since TBRA is not the source of funds, BHAs should not report leasing and expenses into VMS during this period, and WMHA will not receive section 8 administrative fee funding for converted units during this time.

WMHA that is operating HCV program typically receive administrative fees for units under a HAP Contract, consistent with recent appropriation act references to “section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Work Responsibility Act of 1998” and 24 CFR § 982.152(b). During the year of conversion mentioned in the preceding paragraph, these provisions are waived. WMHA will not receive Section 8 administrative fees for PBV RAD units during the year of conversion.

After the year of conversion, the Section 8 ACC will be amended to include Section 8 funding that corresponds to the units covered by the Section 8 ACC. At that time, the regular Section 8 administrative fee funding provisions will apply.

- 9. Choice-Mobility.** One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the WMHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

If as a result of participation in RAD a significant percentage of the WMHA’s HCV program becomes PBV assistance, it is possible for most or all of the WMHA’s turnover vouchers to be used to assist those RAD PBV families who wish to exercise mobility. While HUD is committed to ensuring mobility remains a cornerstone of RAD policy, HUD recognizes that it remains important for the WMHA to still be able to use tenant-based vouchers to address the specific housing needs and priorities of the community. Therefore, HUD is establishing an alternative requirement for BHAs where, as a result of RAD, the total number of PBV units (including RAD PBV units) under HAP Contract administered by the WMHA exceeds 20 percent of the WMHA’s authorized units under its HCV ACC with HUD.

The alternative mobility policy provides that an eligible voucher agency would not be required to provide more than three-quarters of its turnover vouchers in any single year to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented, the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received. In order to adopt this provision, this alternative mobility policy must be included in an eligible WMHA’s administrative plan.

WMHA Policy

In case the total number of PBV units (including RAD PBV units) under HAP Contract administered by the WMHA exceeds 20 percent of the WMHA's authorized units under its HCV ACC with HUD, WMHA will limit the choice mobility.

WMHA will use the alternative mobility policy and limit the number of choice mobility vouchers to no more than three-quarters of its turnover vouchers in any single year to residents of covered properties.

To effectuate this provision, HUD is providing an alternative requirement to Section 8(o)(13)(E) of the Act and 24 CFR § 983.261(c). Please note that this alternative requirement does not apply to PBVs entered into outside of the context of RAD. MTW agencies may not alter this requirement.

Reserve for Replacement. The Project Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. For FHA transactions, Replacement Reserves shall be maintained in accordance with the FHA Regulatory Agreement. For all other transactions, Replacement Reserves shall be maintained in a bank account or similar instrument, as approved by HUD, where funds will be held by the Project Owner or mortgagee and may be drawn from the reserve account and used subject to HUD guidelines.

17.1.X. WMHA INFORMATION TO ACCEPTED FAMILIES [24 CFR 983.252]

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

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

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

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

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

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

17.1.Z. VACANCIES [24 CFR 983.254]

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

WMHA Policy

WMHA shall allow for vacancy loss payments for units under the RAD Program.

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

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

Initial and redetermined rents. The amount of the initial and redetermined rent to owner is determined in accordance with section §983.301 and §983.302.

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

The rent to owner is redetermined at the owner's request for a rent increase in accordance with this section and §983.302. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR in accordance with §983.302.

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

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

Rent to owner for certain tax credit units. This section applies if:

- A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);
- The contract unit is not located in a qualified census tract;
- In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

In the case of a contract unit described in this section, 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.

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

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.

Rent to owner for other tax credit units. Except in the case of a tax-credit unit described in paragraph 983.301(c)(1) of the regulation, the rent to owner for all other tax credit units may be determined by the WMHA pursuant to the regulations.

Reasonable rent. The WMHA shall determine the reasonable rent in accordance with §983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the WMHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the WMHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

Use of FMRs and utility allowance schedule in determining the amount of rent to owner—
(1) Amounts used. (i) Determination of initial rent (at beginning of HAP contract term). When determining the initial rent to owner, the WMHA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the WMHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

Redetermination of rent to owner. When redetermining the rent to owner, the WMHA shall use the most recently published FMR and the WMHA utility allowance schedule in effect at the time of redetermination. At its discretion, the WMHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

Exception payment standard and WMHA utility allowance schedule. Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program. The WMHA may not establish or apply different utility allowance amounts for the PBV program. The same WMHA utility allowance schedule applies to both the tenant-based and PBV programs.

WMHA-owned units. For WMHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with §983.59. The WMHA must use the rent to owner established by the independent entity.

Redetermination of rent to owner. (24CFR §983.302)

The WMHA must redetermine the rent to owner:

- (1) Upon the owner's request; or

(2) When there is a five percent or greater decrease in the published FMR in accordance with §983.301.

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

The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the WMHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the WMHA. The request must be submitted in the form and manner required by the WMHA. **In writing, no less than 90 days prior to anniversary date.**

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

Rent decrease. If there is a decrease in the rent to owner, as established in accordance with §983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

If the WMHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to §983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

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

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

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

See §983.207(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

17.1.BB. REASONABLE RENT [24 CFR 983.303]

Comparability requirement. At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the WMHA, except that where the WMHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with §983.302(e)(2).

Redetermination. The WMHA must redetermine the reasonable rent:

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

How to determine reasonable rent. The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

In determining the reasonable rent, the WMHA must consider factors that affect market rent, such as:

- The location, quality, size, unit type, and age of the contract unit; and
- Amenities, housing services, maintenance, and utilities to be provided by the owner.

Comparability analysis. For each unit, the WMHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project. The WMHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units. The comparability analysis may be performed by WMHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any WMHA staff or contractor engaged in determining the housing assistance

payment based on the comparability analysis may not have any direct or indirect interest in the property.

Owner certification of comparability. By accepting each monthly housing assistance payment from the WMHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the WMHA information requested by the WMHA on rents charged by the owner for other units in the premises or elsewhere.

Determining reasonable rent for WMHA-owned units. For WMHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with §983.59, rather than by the WMHA. The reasonable rent must be determined in accordance with this section. The independent entity must furnish a copy of the independent entity determination of reasonable rent for WMHA-owned units to the WMHA and to the HUD field office where the project is located.

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

General. In addition to the rent limits established in accordance with §983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

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

Subsidized projects. This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

- 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.

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

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

Other subsidy: rent reduction. To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, the WMHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

Prohibition of other subsidy. For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see §983.54.

Rent to owner: effect of rent control and other rent limits. (24CFR §983.305)

In addition to the limitation to 110 percent of the FMR in §983.301(b)(1), the rent reasonableness limit under §§983.301(b)(2) and 983.303, the rental determination provisions of §983.301(f), the special limitations for tax credit units under §983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

17.1.DD. WMHA PAYMENT TO OWNER OF OCCUPIED UNIT [24 CFR 983.351]

When payments are made. During the term of the HAP contract, the WMHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family. Except for discretionary vacancy payments in accordance with §983.352, the WMHA 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).

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

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

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

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

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

Payment for move-out month. If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (“move-out month”). However, the owner may not keep the payment if WMHA determines that the vacancy is the owner's fault.

Vacancy payment at WMHA discretion. At the discretion of WMHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with the regulations for an WMHA-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 vacancy payment to the owner for each month of the maximum two-month period will be determined by WMHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

WMHA may make vacancy payments to the owner only if:

- The owner gives WMHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);
- 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 WMHA 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 WMHA and must provide any information or substantiation required by WMHA to determine the amount of any vacancy payment.

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

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

Tenant payment to owner. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent as determined by WMHA is

the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by WMHA. The owner must immediately return any excess payment to the tenant. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for non-payment of WMHA housing assistance payment.

Limit of WMHA responsibility. WMHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. WMHA is not responsible for paying the tenant rent, or for paying any other claim by the owner. WMHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. WMHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

Utility reimbursement. If the amount of the utility allowance exceeds the total tenant payment, WMHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities (“utility reimbursement”) and the tenant rent to the owner shall be zero. WMHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family. If WMHA chooses to pay the utility supplier directly, the WMHA must notify the family of the amount paid to the utility supplier.

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

Meals and supportive services. Except as provided in the regulations, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

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