

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

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

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

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

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

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

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

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

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

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

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

#### PART I: GENERAL REQUIREMENTS

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

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20

## Chapter 17

percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

### MSHDA Policy

#### **PBV/Supportive Housing**

MSHDA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance for permanent supportive housing.

Developments that have received a 9% tax credit award, but not through the Permanent Supportive Housing set-aside, will be limited to the greater of 25 or 25% of the total units as Project- Based Vouchers. These proposals must submit a MOU for review and approval, and

Developments that have received a 4% tax credit award will not be limited to the greater of 25 units or 25% of the total units as Project-Based Vouchers. For proposals less than 25 units or 25% a MOU will be required. For proposals that exceed the greater of 25 units or 25% an Addendum III and MOU will be required.

#### **PBV/For Certain At-Risk Households in Low-Vacancy Areas**

Under HUD PIH Notice 2014-13, PIH Notice 2018-02 and PIH Notice 2019-01, and upon HUD request, MSHDA will agree to convert tenant-protection vouchers to project-based vouchers awarded to certain at-risk households residing in low-vacancy areas, provided the property and owner comply with all applicable federal regulations under 24 CFR 983. At-Risk Households are excluded from the 20 percent cap of vouchers allocated to project-based assistance.

PIH Notice 2019-01 authorizes a PHA to add units to a PBV Contract executed pursuant to the notice as follows:

- a. The PHA may add tenant-protection vouchers (TPV) units awarded under a separate set-aside funding award for the same project.
- b. The PHA may add units to a PBV HAP contract executed pursuant to the notice, utilizing budget authority allocated to the PHA under the HCV program. Addition of the units must be in accordance with 983.206 (as amended by HOTMA). This policy applies to PBV contracts entered into pursuant to this notice, and all previous TPV set-asides.

#### **Streamlined Voluntary Conversions of Last Remaining Projects of Small Public Housing Agencies NOTICE PIH 2019-05 (HA)**

Upon HUD's request, MSHDA will agree to administer tenant-based Housing Choice Vouchers (HCV) to small Section 9 Public Housing units converted under the Streamline Voluntary Conversion program. Tenants will have an option to remain in their unit using

## Chapter 17

the tenant-based HCV assistance or move off-site in the private market with the HCV assistance.

In order to provide project-based (PBV) assistance at the property, families must voluntarily consent to the PBV assistance. Tenant consent means a family, after being fully informed of its options, voluntarily giving up the ability to receive a tenant-based HCV voucher. If the family fails to consent to the PBV assistance and chooses to remain using tenant-based HCV assistance, that family's unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. To obtain such consent, MSHDA must follow the requirements outlined in Appendix A of PIH Notice 2019-05; in addition, all PBV federal regulations, to include relocation and environmental requirements, are applicable.

### **PBV/Rental Assistance Demonstration (RAD) Program**

Based on HUD PIH Notices 2012-18, 2012-32, and 2012-32 Rev.1, MSHDA has started, and will continue, to participate in the HUD RAD Program which converts tenant-based RAP and Rent Supplement Assistance to tenants in HUD 236 properties to Project-Based Vouchers at those developments. RAD Projects do not count towards the 20 percent cap of vouchers allocated to project-based assistance.

### **PBV/HUD-VASH Vouchers: FR Notice 1/18/17 and Notice PIH 2017-21 (Attachment M)**

A PHA's entire allocation of VASH vouchers may be project-based, so long as the costs fall within the maximum 20 percent of HCV budget authority allowed for project-based assistance. For this purpose, the VASH budget authority is added to HCV budget authority prior to calculating the 20 percent cap.

Although the PHA may project-base HUD-VASH vouchers without further HUD approval, the PHA must consult with their partner Veterans Administration Medical Center (VAMC) to ensure the VAMC will be able to continue to provide supportive services.

### **PBV/Recovery Housing Pilot Program**

MSHDA has set aside Housing Choice Vouchers to be used as project-based voucher assistance for a Permanent Supportive Recovering Housing Project developed in collaboration with local Treatment Courts. The housing brings Drug Court treatment services into this property, efficiently linking participants with services. The goal of the project is to address homelessness and housing instability issues for those successfully participating in treatment court by providing a residence in a supervised, drug free environment to increase successful drug treatment outcomes and a long-term solution for achievement of better health and housing outcomes.

MSHDA may elect to allocate additional Project Based Vouchers to developments in the future.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not

## Chapter 17

required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

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

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

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

Only units that are under a HAP contract that was first executed on or after April 18, 2017 may be covered by the 10 percent exception.

#### MSHDA Policy

MSHDA will not set aside units above the 20 percent program limit at this time.

### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

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

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

## Chapter 17

### MSHDA Policy

MSHDA will not project-base any units not subject to the 20 percent cap.

### **17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

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

### MSHDA Policy

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

Refer to Exhibit 17-1.

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

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

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

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

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

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

### MSHDA Policy

MSHDA will require the owner to submit an EEO Plan to MSHDA staff for review and approval prior to signing of the AHAP.

## Chapter 17

### PART II: PBV OWNER PROPOSALS

#### 17-II.A. OVERVIEW [24 CFR 983.51(a)]

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

#### 17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)] [FR Final Rule 6/25/14]

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

- PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

##### MSHDA Policy

MSHDA may elect to solicit proposals via a Request for Proposals (RFP) for new initiatives and/or special funding sources. In these instances, MSHDA will not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

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

##### MSHDA Policy

MSHDA will award PBV vouchers from proposals selected based on a previous MSHDA competition, such as LIHTC, HOME or other MSHDA development financing programs, within the last three years.

## Chapter 17

Owners must submit a request for PBVs according to the process outlined on the MSHDA/PBV Webpage ([http://www.michigan.gov/mshda/0,4641,7-141-5555\\_60730---,00.html](http://www.michigan.gov/mshda/0,4641,7-141-5555_60730---,00.html)).

Selected proposals must meet MSHDA's Division of Rental Development underwriting criteria.

MSHDA's PBV selected proposals must target one or more of the following supportive housing populations: Homeless to include the three (3) categories, Special Needs, and Chronically Homeless. Refer to PBV definitions within Exhibit 17-2.

In order for owners to participate in this program, the following process must be followed:

**Step One:** The owner/sponsor must have received financing for the development via a competitive process through MSHDA such as LIHTC, HOME, or MSHDA funds. This process and approval must have been provided with no consideration to the award of project-based vouchers. **NOTE:** Developments that have received a 9% tax credit award, but not through the Permanent Supportive Housing set-aside, will be limited to the greater or 25 or 25% of the total units as Project-Based Vouchers. These proposals must submit a MOU for review and approval, and developments that have received a 4% tax credit award will not be limited to the greater or 25 units or 25% of the total units as Project-Based Vouchers. For proposals less than 25 units or 25% a MOU will be required. For proposals that exceed the greater of 25 units or 25% an Addendum III and MOU will be required.

**Step Two:** The owner/sponsor must submit the MSHDA/PBV 101 – Letter of Intent to the designated PBV Specialist with a copy of the competitive award letter (e.g. LIHTC reservation, Grant/loan Agreement).

**Step Three:** Designated PBV Specialist will contact owner/sponsor to discuss project and recommend the correct project proposal for the development. Proposal types include: Existing, Rehabilitation or Newly Constructed. (MSHDA/PBV 102, 103 or 104).

### **Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21; 24 CFR 983.52(b)]**

For certain public housing projects where the PHA has an ownership interest or control, the PHA may select attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

## Chapter 17

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS.

The PHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

### MSHDA Policy

MSHDA will not attach PBVs to projects owned by the PHA as described above.

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

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

### MSHDA Policy

When selecting proposals via a Request for Proposals (RFP), MSHDA will advertise its RFP in the local newspaper and post the RFP, proposal submission requirements, rating and ranking procedures on the MSHDA website.

In order for the proposal to be considered, the owner must submit the proposal to MSHDA by the published deadline date and the proposal must address all requirements. MSHDA will rate and rank proposals based on the established criteria outlined in the RFP. Proposals selected must comply with all HUD program and regulatory requirements.

### **PHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. This also applies to non-competitive selections. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the initial rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must be conducted also by an independent entity.



## Chapter 17

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

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

### MSHDA Policy

This section is not applicable. MSHDA's portfolio does not include PHA owned units.

### **PHA Notice of Owner Selection [24 CFR 983.51(d)] [FR Final Rule 6/25/14]**

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

### MSHDA Policy

Within 15 business days of MSHDA making the selection, MSHDA will notify the selected owner in writing of the owner's selection for the PBV program.

In addition, MSHDA will publish its award of selection of PBV proposals for a minimum of two consecutive days on MSHDA's website. The announcement will include the name of the owner that was selected for the PBV program.

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

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

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

## Chapter 17

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

#### **Ineligible Housing Types [24 CFR 983.53 (a)-(c)] [FR Final Rule 6/25/14]**

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner, this does not include a member of a cooperative who owns shares in the project, and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

#### **Subsidized Housing [24 CFR 983.54]**

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

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

### **17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55 PIH Notice 2013-11, and FR Final Rule 2/28/20]**

The subsidy layering review is intended to prevent excessive public assistance for housing by combining (layering) housing assistance payment subsidy under the PBV program with other

## Chapter 17

governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing.

when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 2/28/20 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

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.

### MSHDA Policy

Subsidy Layering Reviews, as authorized by HUD, will be conducted by MSHDA in its role as Michigan's HCA, in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

Owners are required to submit complete subsidy layering package to the MSHDA Rental Development Division, Low Income Housing Tax Credit section. Refer to the MSHDA website for further guidance.

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

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

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

## Chapter 17

### Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]

As of April 18, 2017, units are not counted against the greater of 25 units or 25 percent per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA (HAP contract executed prior to April 18, 2017) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

#### Supportive Services

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and received supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

#### MSHDA Policy

MSHDA will provide rental assistance to qualified families in excepted units for HAP contracts signed on or after April 18, 2017 (post HOTMA). Qualified families include those who reside in units exclusively for elderly families, and units for households eligible for supportive services available to all families receiving PBV assistance in the project.

The following are examples of the type of services that will be provided depending on the needs of the family:

Transportation for activities such as grocery shopping, attending medical and dental appointments;

Supervised taking of medications;

Treatment for drug rehabilitation in the case of current abusers;

## Chapter 17

Treatment for alcohol addiction in the case of current abusers;  
Training in housekeeping and homemaking activities;  
Family budgeting;  
Child care;  
Parenting skills;  
Computer labs; and  
Work skills development and job training.

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

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

### **Promoting Partially-Assisted Projects [24 CFR 983.56(c)] [FR Final Rule 6/25/14]**

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

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 units or 25 percent of units.

#### MSHDA Policy:

MSHDA is not promoting partially-assisted projects at this time.

## **17-II.G. SITE SELECTION STANDARDS**

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

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

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

## Chapter 17

### MSHDA Policy

It is MSHDA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities.

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

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

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

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

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

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

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

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

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

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

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

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

## Chapter 17

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

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

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

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

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

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

## Chapter 17

### PART III: DWELLING UNITS

#### 17-III.A. OVERVIEW

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

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

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

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

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

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

##### MSHDA Policy:

MSHDA must obtain certifications from owners/developers submitting PBV Proposals for Rehabilitation Projects of all pre-1978 building.

#### 17-III.C. 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. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

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

##### MSHDA Policy:

**Section 504** sets minimum accessible unit percentages for federally-assisted multifamily housing projects (containing four or more units) that are *designed, constructed, or altered after July 11, 1988*. A minimum of five percent of the total PBV units or at least one unit, whichever is greater, must be fully accessible for persons with mobility impairments. An additional two percent of the units (but not less than one unit) in such a project must be fully accessible for person with hearing or vision impairments.



## Chapter 17

If housing was constructed prior to June 2, 1988 and the percentage of accessible units does not meet Section 504 requirements, the PHA should obtain sufficient documentation to support that an undue financial or administrative burden would exist if such requirement were met.

**Fair Housing Act** applies to all housing with four or more units *designed and constructed for initial occupancy after March 13, 1991*. All rental units must be accessible in buildings containing four or more units with one or more elevators, and all ground floor units in buildings containing four or more units, without an elevator. This means that the building and units must meet at least seven accessibility criteria so that a person in a wheelchair can maneuver in the space. These criteria include:

- An accessible building entrance on an accessible route
- Accessible common and public use areas
- Usable doors (usable by a person in a wheelchair)
- An accessible route into and through the dwelling unit
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations
- Reinforced walls in bathrooms for later installation of grab bars
- Usable kitchens and bathrooms

### 17-III.D. INSPECTING UNITS

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

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

#### **Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

##### MSHDA Policy

MSHDA will not provide assistance on behalf of the family until the unit fully complies with HQS.

#### **Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]**

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

## Chapter 17

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24-months during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

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

#### MSHDA Policy

**Effective July 1, 2018**, MSHDA will inspect 100% of the assisted units in a PBV property biennially.

### **Other Inspections [24 CFR 983.103(e)]**

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

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

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

### **Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

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

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

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

## Chapter 17

### **17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT (AHAP) [24 CFR 983.152(a)-(c)]**

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into a HAP contract with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

#### **Content of the Agreement [24 CFR 983.152(d)]**

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

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

#### **Execution of the Agreement [24 CFR 983.153]**

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental

## Chapter 17

approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

### MSHDA Policy

MSHDA will enter into the AHAP with the owner within 15 business days of receiving environmental approval and notice that subsidy layering requirements have been met, as well as other requirements outlined in the Preliminary Award Letter. No construction work, including groundwork, can commence prior to the execution of the AHAP.

## **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 CFR 983.154(b)]**

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

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

### **Equal Opportunity [24 CFR 983.154(c)]**

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

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

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

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

## **17-IV.D. COMPLETION OF HOUSING**

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

### **Evidence of Completion [24 CFR 983.155(b)]**

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

## Chapter 17

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

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

### MSHDA Policy

MSHDA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. MSHDA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

### **PHA Acceptance of Completed Units [24 CFR 983.156]**

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

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

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

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW [24 CFR 983.202]**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. With the exception of single-family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

## Chapter 17

- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per cap (as described in 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

### **Execution of the HAP Contract [24 CFR 983.204]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS), unless the PHA has adopted a policy to enter into a HAP contract for units that file the initial HQS inspection as a result of only non-life-threatening conditions. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement, and the owner furnishes all required evidence of completion.

#### MSHDA Policy

For existing housing, the HAP contract will be executed within 15 business days of the PHA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 15 business days of MSHDA determining that the units have been completed in accordance with the AHAP, all units meet HQS, and the owner and MSHDA have submitted all required evidence of completion and compliance.

### **Term of HAP Contract [24 CFR 983.205, and Notice PIH 2017-21]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of a HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

## Chapter 17

### MSHDA Policy

The initial term of all PBV HAP contracts signed on or after April 18, 2017 will be 20 years. PBV HAP Contracts signed prior to April 18, 2017 may be amended to the maximum of 20 years.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP Contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed after the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA- owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### MSHDA Policy

HAP contracts signed prior to April 18, 2017 that are still in the initial term may be extended to the term up to the maximum 20 years if mutually agreed upon by the PHA and the owner. The PHA and owner may subsequently agree to extend the contract for up to an additional 20 years. The maximum term of the HAP contract in these instances (initial term and subsequent extension) would be 40 years. HAP contracts that are no longer in the initial term (completed the initial 15-year term) may be extended for a total of 20 years if mutually agreed upon by the PHA and the owner. 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.

When determining whether or not to extend an expiring PBV contract, the PHA 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.

## Chapter 17

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

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

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

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

### ***Termination by Owner [24 CFR 983.205(d)]***

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

### **Statutory Notice Requirements: Contract termination or expiration [24 CFR 983.206; FR Notice 1/18/17, and Notice PIH 2017-21]**

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

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based



## Chapter 17

assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

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

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

#### MSHDA Policy

MSHDA will abate and may remove PBV units from HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 CFR 983.207(a)]**

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

#### MSHDA Policy

MSHDA will consider switching like units in certain circumstances. Circumstances may include, but are not limited to:

The owner continues to lease to a Zero HAP participant;

The owner continues to lease to a participant not eligible for services offered to other assisted units.

Prior to approval, MSHDA must inspect the new units and determine reasonable rent. Upon completion, the owner and MSHDA must execute a contract amendment to substitute the units.

### **Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]**

The PHA and owner may 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 found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

## Chapter 17

### MSHDA Policy

MSHDA will consider adding units to the HAP contract when the PHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

Market conditions;

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

Voucher holders are having difficulty finding units that meet program requirements such as units with mobility or hearing/visual features.

Additional housing units have become available within the development.

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

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

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

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

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

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

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

## Chapter 17

- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- 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.

### 17-V.F. ADDITIONAL HAP REQUIREMENTS

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

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

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

#### MSHDA Policy

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

#### **Transfer of the Contract or Property**

Neither the HAP contract nor the property may be transferred without the advance written consent of the PHA in accordance with HUD requirements.

#### MSHDA Policy

MSHDA must approve an owner's request for a transfer in General Partner, a change in ownership/assignment of HAP Contract, or a change in property Management Company. In the event of a foreclosure, MSHDA will consent to the transfer of the HAP contract to the property purchaser, as long as the purchaser agrees to comply with the obligation of the HAP contract and satisfies the requirements of MSHDA's transfer checklist (Exhibit 17-3).

## Chapter 17

### PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

#### 17-VI.A. OVERVIEW

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

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

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is a parent, child, grandparent, grandchild, sister, or brother of any member of the family unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

##### MSHDA Policy

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

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

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

## Chapter 17

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

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

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

#### MSHDA Policy

MSHDA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. A list of projects receiving PBV assistance is available on MSHDA's website located at <http://www.michigan.gov/mshda>.

In counties where a PBV program exists, the HA will maintain PBV waiting lists that are site and bedroom size specific and separate from the county waiting list for Housing Choice Vouchers (HCV). County PBV waiting lists will remain open at all times.

MSHDA will require a local service agency to certify the applicant meets one of the targeted supportive housing categories in order to be placed on the appropriate PBV waiting list.

**Effective July 1, 2018**, MSHDA will require the local service agency to recertify homeless status at the time the applicant is pulled from the waiting list if the application date is greater than 120 days.

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

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

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

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

#### MSHDA Policy

At least 80% of families admitted to the PBV program in MSHDA's fiscal year must be extremely low-income families.

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

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

## Chapter 17

### MSHDA Policy

Owners and managers of multifamily housing projects that have accessible units must take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-disabled applicant shall offer such unit:

- First, to a current occupant of another unit of the same project, or comparable projects under common control, having a disability requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then
- Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement into the lease) to move to a non-accessible unit when available.

During initial lease up, the Lead/referring agency must provide applicants with a copy of the AHAP Exhibit B, which lists the features of the special units, when completing the PBV Waiting List Application. When referring applicants to the waiting list after initial lease up, the Lead/referring agency must provide the applicant with a copy of Exhibit D of the PBV HAP Contract, which lists the features of the special units. In either instance, if the applicant indicates they require the features in the accessible units, the Lead/referring agency must indicate so on the Project-Based Voucher Application (PBV 322) and/or the Certification of Eligibility (PBV 531) so that the applicant can be properly coded on the PBV Waiting List.

If an accessible unit becomes available and there are no applicants on the PBV waiting list that require the features, the unit will be offered to the next applicant on the waiting list for the appropriate bedroom size. All partners are encouraged to reach out to the Disability Networks and other available resources to obtain names before offering the unit to an applicant not requiring the features. Documentation should be maintained in the lead agency files as to which agencies have been contacted. Applicants not requiring an accessible unit must be informed that they will be required to move if a family applies to the property, requiring an accessible unit. Refer to the Required Move Section later in this Chapter.

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

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

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that

## Chapter 17

preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17]. In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with “excepted units” for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b) FR Notice 1/18/17].

### MSHDA Policy

MSHDA will provide a selection preference when required by the regulation (e.g., eligible in-place families and families residing in excepted units).

MSHDA will offer the following preferences for the PBV program in select PBV developments, when other funding sources in the development require such a preference:

- **Chronic Homeless Preference:** A “chronically homeless” individual is defined to mean a homeless individual with a disability who lives either in a place not meant for human habitation, a safe haven, or in an emergency shelter, or in an institutional care facility if the individual has been living in the facility for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility. In order to meet the “chronically homeless” definition, the individual also must have been living as described above continuously for at least 12 months, or on at least four separate occasions in the last 3 years, where the combined occasions total a length of time of at least 12 months. Each period separating the occasions must include at least 7 nights of living in a situation other than a place not meant for human habitation, in an emergency shelter, or in a safe haven.

Chronically homeless families are families with adult heads of household who meet the definition of a chronically homeless individual. If there is no adult in the family, the family would still be considered chronically homeless if a minor head of household meets all the criteria of a chronically homeless individual. A chronically homeless family includes those whose composition has fluctuated while the head of household has been homeless.

- **Veteran Preference:** A United States Veteran who can document veteran status via the Certificate of Release or Discharge from Active Duty (DD 214).
- **Homeless Frequent Emergency Department Users with Care Needs Preference:** This population will be identified via a data match of Medicaid and Homeless Management Information System data. The population will meet HUD’s definition for Category 1 literal homelessness and will have a high level of emergency department usage, inpatient stays and overall Medicaid utilization. The goal of this preference is to target housing resources for the highest need individuals that are homeless and medically vulnerable.

## Chapter 17

- **Highly Vulnerable Prioritized Preference:** MSHDA will offer this preference to select PBV properties that have elected to serve highly vulnerable populations with their supportive housing units that may include: chronically homeless, those at the top of the Continuum of Care (COC) prioritized Permanent Supportive Housing (PSH) registry, those that are homeless and utilizing other public systems with frequency such as hospitals, jails, etc. The goal of this preference is to serve those with the most vulnerability and the highest of needs that otherwise would continue to be homeless.
- **Supportive Housing Preference:** MSHDA will offer this preference to applicants in select PBV properties, where the owner and MSHDA entered into a PBV Housing Assistance Payment (HAP) contract prior to 2010, and where MSHDA has approved the owner to serve both supportive housing population applicants and income eligible applicants. The owner must submit a written request to MSHDA and receive approval before applications can be accepted for both supportive housing population applicants and income eligible applicants.

In order to receive this preference, the applicant must be certified by the Lead Agency as meeting one of the supportive housing targeted populations (homeless, chronic homeless, survivors of domestic violence or special needs) and those applicants that receive the preference will be given a priority over income eligible applicants, when a PBV unit becomes available.

### 17-VI.E. OFFER OF PBV ASSISTANCE

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

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

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

#### MSHDA Policy

A name may only be removed from a PBV waiting list when:

- The applicant refuses the PBV offering without good cause.
- The applicant did not respond, or designated representative did not respond to MSHDA's attempts to reach the applicant for eligibility determination verification(s) and/or updates;
- Applicant is ineligible (including failure to pass a criminal screening, over income, and non-citizenship);
- Applicant/participant requests removal from the PBV waiting list.



## Chapter 17

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

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

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

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

#### ***Persons with Disabilities***

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

#### ***Persons with Limited English Proficiency***

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

### **17-VLF. OWNER SELECTION OF TENANTS [24 CFR 983.253(a)(3)].**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### **Leasing [24 CFR 983.253(b)]**

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

#### **MSHDA Policy**

The owner must notify MSHDA in writing (mail, fac, or email) within five business days of learning about any vacancy or expected vacancy.

MSHDA will make every reasonable effort to refer families to the owner with 15 business days of receiving such notice from the owner.

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

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of

## Chapter 17

contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

### MSHDA Policy

If any contract units have been vacant for 120 days, MSHDA may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. MSHDA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of MSHDA's notice.

## **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

### **PHA Responsibility**

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

### MSHDA Policy

MSHDA will not conduct screening to determine a PBV applicant family's suitability for tenancy. MSHDA reviews and approves rental assistance only.

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

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(411)]

### MSHDA Policy

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

### **Owner Responsibility**

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

- Payment of rent and utility bills;
- Caring for a unit and premises;

## Chapter 17

- 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.

### MSHDA Policy

If the owner/property management company denies a family for occupancy in a PBV unit, MSHDA will also deny the applicant. The applicant is not eligible for an informal review from MSHDA; however, the applicant can appeal the denial decision with the property management company.

## PART VII: OCCUPANCY

### 17-VII.A. OVERVIEW

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

### 17-VII.B. LEASE [24 CFR 983.256(a)]

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

### Form of Lease [24 CFR 983.256(b)]

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

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

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

### MSHDA Policy

MSHDA will not review the owner's lease for compliance with state or local law.

### Lease Requirements [24 CFR 983.256(c)]

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

- The names of the owner and the tenant;

## Chapter 17

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

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

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

### **Initial Term and Lease Renewal [24 CFR 983.256(f)]**

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 in either successive definitive terms (e.g. month-to-month or year-to-year) or for automatic indefinite extensions of the lease term. For automatic indefinite extension of the lease term, 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 PHA terminates the HAP contract; **or**
- The PHA terminates assistance for the family.

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

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

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

## Chapter 17

The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

### **Owner Termination of Tenancy [24 CFR 983.257(a)]**

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

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

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. The PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.32, except the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **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 right 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 PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 983.211.

#### MSHDA Policy

If the participating family receiving zero assistance experience a change in circumstances that would result in a HAP payment to the owner, the family must notify MSHDA of the change and request an interim reexamination before the expiration of the 180-day period.

### **Security Deposits [24 CFR 983.258]**

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

#### MSHDA Policy

MSHDA will allow the owner to collect any security deposit in accordance with state law.

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

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.

## Chapter 17

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

### **17-VII.C. MOVES**

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

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

##### MSHDA Policy

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

PBV assistance in the same project;

Tenant-based voucher assistance

If the PHA offers the family a tenant-based voucher, the PHA 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 PHA) or the date upon the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

##### MSHDA Policy

When MSHDA offers a family a tenant-based voucher, the family will be given 60 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 60-day time frame, MSHDA will terminate the housing assistance payments at the expiration of this 60-day period and will remove the unit from the HAP contract.

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

#### **Family Right to Move [24 CFR 983.261]**

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

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher

## Chapter 17

or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

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

### MSHDA Policy

#### **Family Right to Move**

Under the HUD Family Right to Move, the participant may request to move with continued assistance (voucher) after the initial term of the lease. The participant must be in good standing as outlined in Chapter 10 and MSHDA must have an available voucher to offer the participant.

#### **PBV Unit Transfers**

In addition to the HUD Family Right to Move after the initial term of the lease, MSHDA will allow PBV participants to make an elective move from one PBV unit to another PBV unit listed on the Exhibit A of the development's HAP contract. The approval can be granted even if there are existing names on the PBV waiting list. The participant must move to a proper-size unit, unless MSHDA has approved a reasonable accommodation for a larger-sized unit.

If a PBV participant requests a move to another PBV unit within the development, the Housing Agent must contact the property management agent to obtain written approval and notify the PBV Specialist. Upon written approval from property management and notification to the PBV Specialist, the HA will process the move to the new PBV unit. The participant must be in good standing as outlined in Chapter 10.

HA will backfill the vacant PBV unit with the next name from the PBV waiting list once the PBV Unit Transfer is completed

If a PBV participant requests to move to a different PBV development, that maintains a separate PBV waiting list, the PBV participant must apply to the PBV development and meet the established eligibility criteria for the PBV unit

#### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

## Chapter 17

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

### MSHDA Policy

When a PBV participant invokes their rights under VAWA and requests an emergency move, upon review and approval of the documentation provided, MSHDA will issue the participant a tenant-based voucher (HCV) to move along with a Mover's Briefing Packet, regardless if the participant has been living in the unit for less than a year. When determining the voucher size for the emergency move, MSHDA will take into consideration minor children, elderly or disabled family members associated with the move.

If the participant requests a move to a different unit within the development and the proper-sized unit is available for the move, MSHDA will approve the move to the new PBV unit.

### **17-VI.D. EXCEPTIONS TO OCCUPANCY CAP [24 CFR 983.262]**

As of April 18, 2017, the PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA 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. 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 PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a "qualifying family" because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.



## Chapter 17

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; 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 to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted 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 qualified family.

### MSHDA Policy

MSHDA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, MSHDA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, MSHDA will terminate the housing assistance payments at the expiration of this 30-day period.

MSHDA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

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

## Chapter 17

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

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

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

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

### **Certain Tax Credit Units [24 CFR 983.301(c)]**

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

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, 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 110 percent of the fair market rent or any approved exception payment standard;

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

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

### ***Definitions***

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

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

## Chapter 17

### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The PHA must determine the reasonable rent in accordance with 24 CFR 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rent 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. However, the rent to the owner must be reduced in the following cases:

- To correct errors in calculation 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 24 CFR 983.55
- If the decrease to the rent to owner is required based on changes in the allocation of the responsibilities of utilities between owner and tenant.

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to the owner shall not at any time exceed the reasonable rent.

#### MSHDA Policy

MSHDA has elected to establish the initial rent to owner as the rent floor for projects with executed HAP contracts after November 24, 2014.

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

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

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

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

#### MSHDA Policy

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

In addition to considering a written request from an owner, MSHDA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of

## Chapter 17

the HAP, or redetermination of rent, if MSHDA determines it is necessary due to MSHDA budgetary constraints.

### **Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The

PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of PHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

#### MSHDA Policy

MSHDA may elect to adopt the use of Small Area Fair Market Rents (SAFMRs) in an entire metropolitan area or specified zip codes as allowed by HUD. In doing so, MSHDA will consider whether to apply SAFMRs to the PBV program within a designated metropolitan area or specified zip code. MSHDA will follow the requirements outlined in PIH Notice 2018-01 and the HUD published Implementation Guidebook to properly implement SAFMRs.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA **must** redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

#### ***Rent Increase***

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

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

## Chapter 17

### MSHDA Policy

An owner's request for a rent increase must be submitted to the assigned PBV Specialist no earlier than 120 days prior to the HAP anniversary date and no later than 90 days prior to this date. The request must include the items below. The effective date of any change will be the HAP anniversary date for the development. The request will not be considered complete until all items are received per the posted Notice to the Owners for Annual PBV Contract Rent Adjustment Request.

The owner's request for an increase in rents must include (refer to the PBV website for further information):

A. A cover letter which includes the following:

- Contact name, phone number and email address for staff preparing request.
- Current PBV contract rents and proposed PBV contract rents by unit type and size.
- If there are unassisted market rate units within the development, provide the current rents by unit type comparable to the PBV within the development.
- List of all the funding sources within the development financing such as: LIHTC, NSP 1, 2 or 3; HOME (low, or high)
- If the project has federal subsidy, identify the source. (Section 236, IRP, Section 515, Section 221 (d)(3) or other federal subsidy).

B. Attachments:

- The PBV Reasonable Rent Test – Subject Unit (MSHDA 37a). This form must be completed for each unit type when an adjustment is requested. Refer to the Unit Definitions within Exhibit 8-10. Management is encouraged to complete a review prior to submitting a request to ensure the rents requested are reasonable and supported in the market area of the development. Use only market rate units. NOTE: LIHTC units are not considered market rate units for this purpose.
- Copy of current property rent role or rent schedule indicating current LIHTC rent and market rent charged for other like units within the development.

### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### MSHDA Policy

MSHDA has elected to establish the initial contract rents as the rent floor for projects with executed HAP Contracts after November 24, 2008 that have not experienced a contract rent decrease.

## Chapter 17

### *Notice of Rent Change*

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

#### MSHDA Policy

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

### **PHA-owned Units [24 CFR 983.301(g)]**

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

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

At the time initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except that where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### **When Rent Reasonable Determinations Are Required**

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

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

#### **How to Determine Reasonable Rent**

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

## Chapter 17

### *Comparability Analysis*

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### **PHA-Owned Units**

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

#### MSHDA Policy

This section is not applicable. MSHDA's portfolio does not include PHA owned units.

### **Owner Certification of Reasonable Rent**

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

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

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

#### **Other Subsidy [24 CFR 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to the owner because of other governmental subsidies, including tax credit or tax exemption grants, or other subsidized funding.

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

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

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

## Chapter 17

- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### Combining Subsidy

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

### Rent Control [24 CFR 983.305]

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

## PART IX: PAYMENTS TO OWNER

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

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

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

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

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

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

#### Vacancy Payments [24 CFR 983.352(b)]

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

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner.

The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);



## Chapter 17

- 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 the PHA 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 the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

### MSHDA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified MSHDA of the vacancy.

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

The amount of the vacancy payment 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.)

No vacancy payments will be paid at initial lease-up.

Vacancy payments will start at the beginning of the month.

Vacancy payments will extend from the beginning of the first calendar month after the move-out month for a period not exceeding two full months. Vacancy payments will be prorated based on the number of days the unit is vacant.

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

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

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

## Chapter 17

### **Tenant and PHA Responsibilities**

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

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

### **Utility Reimbursements**

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

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

#### MSHDA Policy

MSHDA will make utility reimbursements to the family.

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

#### **Meals and Supportive Services**

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

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

#### **Other Charges by Owner**

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