

Asst. Secy., for Public and Indian Housing, HUD

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interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer downpayment assistance under this paragraph until HUD publishes a notice in the FEDERAL REGISTER.

[67 FR 64494, Oct. 18, 2002]

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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Subpart A—General

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

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13)

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of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

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

(a) *24 CFR Part 982.* Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that do not apply to the PBV program. The rest of part 982 applies to the PBV program. For use and applicability of voucher program definitions at § 982.4, see § 983.3.

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

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

(2) Provisions on portability;

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

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

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

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

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

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

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

(3) Subpart H of part 982;

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

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

(6) Subpart K of Part 982: subpart K does not apply, except that the fol-

lowing provisions apply to the PBV Program:

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

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

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

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

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

§ 983.3 PBV definitions.

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

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

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

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

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

Admission. The point when the family becomes a participant in the PHA's

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

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

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

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

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

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

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

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

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

Excepted units (units in a multifamily building not counted against the 25

percent per-building cap). See § 983.56(b)(2)(i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted

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

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

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

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

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

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

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

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

Definitions. See 24 CFR part 5, subpart D.

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

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

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

and section 504 of the Rehabilitation Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Waiver of HUD rules. See 24 CFR 5.110.

[70 FR 59913, Oct. 13, 2005, as amended at 72 FR 73497, Dec. 27, 2007; 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 24, 2010]

§ 983.5 Description of the PBV program.

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

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

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

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

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

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

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

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§ 983.6 Maximum amount of PBV assistance.

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

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

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

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

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

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

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

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

§ 983.8 Equal opportunity requirements.

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

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

§ 983.9 Special housing types.

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

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

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

§ 983.10 Project-based certificate (PBC) program.

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

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

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

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

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

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

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

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

(2) Selection of a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that requires competitive selection of proposals (*e.g.*, HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not

involve any consideration that the project would receive PBV assistance.

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

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

(e) *PHA-owned units.* A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

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

§ 983.52 Housing type.

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

(a) *Existing housing*—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the

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units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with Subpart D of this part do not qualify as existing housing.

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

§ 983.53 Prohibition of assistance for ineligible units.

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

(1) Shared housing;

(2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(5) Manufactured homes;

(6) Cooperative housing; and

(7) Transitional Housing.

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

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

(d) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assist-

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ance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

§ 983.54 Prohibition of assistance for units in subsidized housing.

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

(a) A public housing dwelling unit;

(b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

(c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

(d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;

(f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);

(h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(j) A Section 101 rent supplement project (12 U.S.C. 1701s);

(k) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (*e.g.*, a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);

(l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy"

does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

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

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

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

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

(b) *Exception to 25 percent per building cap—(1) When PBV units are not counted*

against cap. In the following cases, PBV units are not counted against the 25 percent per building cap:

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

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

(ii) "Qualifying families" means:

- (A) Elderly or disabled families; or
- (B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under § 983.261(d), and the owner may terminate the lease in accordance with § 983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good

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cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

(C) The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

(3) *Set-aside for qualifying families.* (i) In leasing units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families.

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

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

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

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

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

§983.57 Site selection standards.

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

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing,

newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

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

(i) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

(ii) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

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

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

(v) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

(vii) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil

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

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

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

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

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

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

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

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

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income

workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

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

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

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

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

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

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi)) of this section for further guidance on this criterion).

(iii) As used in paragraph (e)(3)(i) of this section, "sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation

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to the racial mix of the locality's population.

(iv) Units may be considered "comparable opportunities," as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

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

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

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

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

(E) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

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

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

(vi) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strat-

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

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

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

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

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

§ 983.58 Environmental review.

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

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the "responsible entity" or "RE") is responsible for the federal environmental review under the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

(2) If a PHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the review.

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

(d) *Limitations on actions before completion of the environmental review.* (1) The PHA may not enter into an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

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

(ii) The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or

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

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

funds (where such submission is required).

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

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

§ 983.59 PHA-owned units.

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

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

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser; and

(2) Inspection of PHA-owned units as required by § 983.103(f).

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

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

(2) The PHA, independent entity, and appraiser may not charge the family

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any fee for the appraisal or the services provided by the independent entity.

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

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

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

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

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

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

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of acces-

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sible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

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

§ 983.103 Inspecting units.

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

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

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

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

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

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

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

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

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

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

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

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

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

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

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

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required by HUD headquarters (see § 982.162 of this chapter).

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

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

- (i) Site;
- (ii) Location of contract units on site;
- (iii) Number of contract units by area (size) and number of bedrooms and bathrooms;
- (iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
- (v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
- (vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(i)(viii) of this section.
- (vii) Estimated initial rents to owner for the contract units;
- (viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of

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units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

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

§ 983.153 When Agreement is executed.

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

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

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

§ 983.154 Conduct of development work.

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

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

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

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

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laws and regulations. The PHA must monitor compliance with labor standards.

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

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

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

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

§ 983.155 Completion of housing.

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

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

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

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

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

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

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

(A) HUD housing quality standards;

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

(C) Zoning;

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

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

§ 983.156 PHA acceptance of completed units.

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

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

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

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

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

Subpart E—Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under part 983 (including assist-

ance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

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

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

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

§ 983.203 HAP contract information.

The HAP contract must specify:

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

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

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

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

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

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

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per

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building cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and

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

§ 983.204 When HAP contract is executed.

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

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

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

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

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

§ 983.205 Term of HAP contract.

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

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

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

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

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

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

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

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

PHA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.

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

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

§ 983.207 Condition of contract units.

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

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

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the

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

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

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

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

§ 983.208 Owner responsibilities.

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

§ 983.209 Owner certification.

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

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

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

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

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

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

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

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

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

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

Subpart F—Occupancy

§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?*

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

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

(3) The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

(b) *Protection of in-place families.* (1) The term "in-place family" means an

eligible family residing in a proposed contract unit on the proposal selection date.

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

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

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

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA selection policy;

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010]

§ 983.252 PHA information for accepted family.

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

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

(2) Family and owner responsibilities.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family;

(2) Family obligations under the program; and

(3) Applicable fair housing information.

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

(2) The PHA shall have some mechanism for referring to accessible PBV

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units a family that includes a person with mobility impairment.

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

§ 983.253 Leasing of contract units.

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

(2) The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

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

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

§ 983.254 Vacancies.

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

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

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

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

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the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

§ 983.255 Tenant screening.

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

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

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

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

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

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

(v) Compliance with other essential conditions of tenancy;

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

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

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

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

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

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

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

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010]

§ 983.256 Lease.

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

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

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

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

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

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

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

(3) The term of the lease (initial term and any provision for renewal);

(4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the

lease in accordance with HUD requirements;

(5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and

(6) The amount of any charges for food, furniture, or supportive services.

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

(i) The program tenancy requirements (as specified in this part);

(ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).

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

(e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of all such changes.

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

(f) *Initial term of lease.* The initial lease term must be for at least one year.

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

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§ 983.257 Owner termination of tenancy and eviction.

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

(b) Upon lease expiration, an owner may:

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

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

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66265, Oct. 27, 2010]

§ 983.258 Security deposit: amounts owed by tenant.

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

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

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

other amounts which the tenant owes under the lease.

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

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

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

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

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

(b) *PHA offer of continued assistance.*

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

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

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

(iv) Other comparable public or private tenant-based assistance (*e.g.*, under the HOME program).

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

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

§ 983.260 Family right to move.

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

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

(d) If the family terminates the assisted lease before the end of one year,

the family relinquishes the opportunity for continued tenant-based assistance.

§ 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

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

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly or disabled families; or to families receiving supportive services.

(c) If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception (*e.g.*, a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with § 983.206(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (*e.g.*, a family fails, without good cause, to

successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

Subpart G—Rent to Owner

§983.301 Determining the rent to owner.

(a) *Initial and redetermined rents.* (1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and §983.302.

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

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

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

(1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) *Rent to owner for certain tax credit units.* (1) This paragraph (c) applies if:

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);

(ii) The contract unit is not located in a qualified census tract;

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

(2) In the case of a contract unit described in paragraph (c)(1) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

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

(4) A "qualified census tract" is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) *Rent to owner for other tax credit units.* Except in the case of a tax credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units is determined pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine reasonable rent in accordance with §983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent.

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

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

(2) *Exception payment standard and PHA utility allowance schedule.* (i) Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program.

(ii) The PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

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

§ 983.302 Redetermination of rent to owner.

(a) The PHA must redetermine the rent to owner:

(1) Upon the owner's request; or

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

(b) *Rent increase.* (1) The PHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to §983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

(2) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must

be submitted in the form and manner required by the PHA.

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

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

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

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

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

(3) See §983.206(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent as determined by the PHA.

(b) *Redetermination.* The PHA must redetermine the reasonable rent:

(1) Whenever there is a five percent or greater decrease in the published

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FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

(2) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building; and

(4) Whenever there is any other change that may substantially affect the reasonable rent.

(c) *How to determine reasonable rent.*

(1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) *Comparability analysis.* (1) For each unit, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) *Owner certification of comparability.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the

PHA on rents charged by the owner for other units in the premises or elsewhere.

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.58, rather than by the PHA. Reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

§ 983.304 Other subsidy: effect on rent to owner.

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

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

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

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

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) Any other type of federally subsidized project specified by HUD.

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

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

(e) *Other subsidy: PHA discretion to reduce rent.* At its discretion, a PHA may

reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

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

[70 FR 59913, Oct. 13, 2005, as amended at 72 FR 65207, Nov. 19, 2007]

§ 983.305 Rent to owner: effect of rent control and other rent limits.

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

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

(a) *When payments are made.* (1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with § 983.352, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

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

(c) *Calculating amount of payment.* The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent

(total tenant payment minus the utility allowance).

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

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

§ 983.352 Vacancy payment.

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

(b) *Vacancy payment at PHA discretion.* (1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (b)(2) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

(2) The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant’s security deposit). Any vacancy payment may cover only the period the unit remains vacant.

(3) The PHA may make vacancy payments to the owner only if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to

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the best of the owner's knowledge and belief);

(ii) The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

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

§983.353 Tenant rent; payment to owner.

(a) *PHA determination.* (1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.* (1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the ten-

ancy of an assisted family for non-payment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§983.354 Other fees and charges.

(a) *Meals and supportive services.* (1) Except as provided in paragraph (a)(2) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

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

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

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

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Subpart D—Reporting

- 984.401 Reporting.
- AUTHORITY: 42 U.S.C. 1437f, 1437u, and 3535(d).

SOURCE: 61 FR 8815, Mar. 5, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 984 appear at 65 FR 16731, Mar. 29, 2000.

Subpart A—General

§ 984.101 Purpose, scope, and applicability.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs

with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u), under HUD's rental voucher, rental certificate, and public housing programs.

(b) *Scope.* (1) Each PHA that received funding for public housing units under the FY 1991 and FY 1992 FSS incentive award competitions must operate a public housing FSS program.

(2) Each PHA that received funding for Section 8 rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition must operate a Section 8 FSS program.

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA for which HUD reserved funding (budget authority) for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998 must operate a Section 8 FSS program.

(ii) Each PHA for which HUD reserved funding (budget authority) to acquire or construct additional public housing units in FY 1993 through October 20, 1998 must operate a public housing FSS program.

(c) *Applicability.* This part applies to:

- (1) The public housing program, and
- (2) The Section 8 certificate and voucher programs.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16731, Mar. 29, 2000]

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on Section 8, public, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to