SUPPLEMENTAL DOCUMENT 3

Project-Based Vouchers and
Project-Based Veterans Affairs Supportive Housing (PBV/PBVASH)
Regulations and Guidelines

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Project-Based Voucher and Project-Based Veterans Affairs Supportive Housing (PBV/PBVASH)
Regulations and Guidelines

I. GENERAL

Applicants requesting funding for housing units under the Notice of Funding Availability (NOFA) issued by the Los Angeles County Development Authority (LACDA), for projects located within the jurisdiction of the LACDA, are invited to apply to participate in the Project-Based Voucher and Project-Based Veterans Affairs Supportive Housing (PBV/PBVASH) program. Project-Based Vouchers are administered by the LACDA's Housing Assistance Division. The LACDA's goals are to attract affordable housing developments in its jurisdiction, increase affordability of housing for families making at or below 30% of the Area Median Income, increase the number of affordable housing developments that serve homeless veterans and their families, and further the U.S. Department of Housing and Urban Development's (HUD) and the LACDA's goals of de-concentration of poverty.

This Section addresses only those aspects of the PBV/PBVASH program. To understand how the PBV/PBVASH program will function with regard to relocation, applications, waiting list, leasing, maintenance, rent adjustments, and other aspects of property management, applicants must review the federal regulations and Housing Assistance Division policies contained in Attachment B of this Section. A list of helpful definitions is also included in Attachment B.

The LACDA reserves the right to determine the number of vouchers to be awarded to any project and to determine start dates of any PBV/PBVASH contracts awarded. The determination of start dates may be affected by the availability of vouchers, which cannot be predicted at this time.

See the Eligible Areas section contained in this NOFA for geographic restrictions related to PBV/PBVASH eligibility. Applications for PBVASH only may either be in predevelopment or already completed (but not in construction).

II. GOVERNING REGULATIONS

The PBV program is authorized by Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)). The VASH program is authorized by section 8(o)(19) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(19)). The PBV program is regulated by Title 24 of the Code of Federal Regulations Part 983 (24 CFR Part 983), with additional rules as published in the Federal Register (Vol. 79, No. 122, 06/25/2014, Vol. 82, No. 11, 01/18/2017, Vol. 82, No. 134, 07/14/2017, and Vol. 88, No. 48, 03/13/2023), which is included as part of Attachment B to this Section. The VASH program is regulated by Title 24 of the Code of Federal Regulations Part 982 (24 CFR Part 982), with additional special rules as published in the Federal Register (Vol. 73, No. 88, 05/06/2008). HUD's notices

(PIH 2017-21, PIH 2011-50 & PIH 2009-11) regarding project-basing vouchers are included as part of Attachment B to this Section. The LACDA's PBV program is governed by the Housing Assistance Division's Administrative Plan, specifically, but not limited to Chapter 19, "Project-Based Vouchers." This chapter is included as part of Attachment B to this section.

The PBV/PBVASH requirements cited above shall prevail in the event of any conflict with the NOFA. In addition, if any portion of this NOFA or the Administrative Plan is in conflict with the provisions of 24 CFR Part 983 or Part 982, the provisions of the CFR shall prevail.

All applicants for PBV/PBVASH vouchers must be familiar with the above regulations. All applicants must at all times meet the federal and the LACDA's requirements of the PBV/PBVASH program.

A. Other Federal Requirements
Applicants must be familiar with other federal requirements and provisions applying to the PBV/PBVASH program that are referenced at 24 CFR Part 983 and 24 CFR Part 982.

B. Description of the PBV/PBVASH Program
The PBV/PBVASH program is administered by the LACDA's Housing Assistance Division. The PBV/PBVASH program is funded through the LACDA's HUD allocation of PBV/PBVASH vouchers, subject to approval by HUD, which will be sought through a process separate from this NOFA.

New construction or rehabilitated housing is developed under an Agreement to Enter into a Housing Assistance Payments Contract (AHAP contract), executed by the owner/developer and the LACDA. In the AHAP contract, the LACDA agrees to execute a Housing Assistance Payment Contract (HAP contract) after the owner completes the construction or rehabilitation of the units in a manner consistent with the agreement and Housing Quality Standards (HQS).

Existing buildings requesting PBV/PBVASH without construction or rehabilitation (if offered in the NOFA) are subject to passing the LACDA's Housing Quality Standards (HQS) prior to commitment of the vouchers and entering into a HAP Contract.

During the term of the HAP contract, the LACDA will make housing assistance payments to the owner for units leased and occupied by eligible families.

All units utilizing PBV/PBVASH must be specifically identified and remain designated PBV/PBVASH units for the life of the contract. Floating PBV units will not be allowed.

All projects utilizing PBV/PBVASH are subject to a National Environmental Policy Act (NEPA) environmental review prior to execution of the AHAP Contract.

III. TERMS AND REQUIREMENTS

A. Maximum Amount of PBV/PBVASH Assistance

The LACDA may select owner/developer applications to provide a combined total of up to 300 PBVs and PBVASH vouchers, as defined in the NOFA.

The following types of rental assistance are available to projects that also qualify for a capital award through the NOFA application:

- A combined total of up to 300 PBVs and PBVASH Vouchers, allocated to meet demand. These vouchers are only available for Special Needs units funded by the LACDA.

B. Eligible Uses

Monthly PBV/PBVASH rental assistance payments may be used for the same lawful purpose as rent upon execution of a HAP contract.

C. Release of Funds

PBV/PBVASH rental assistance payments are issued monthly on behalf of qualifying tenants in qualifying units under the terms of a HAP contract entered into by the owner and the LACDA only after: (1) project selection, (2) California Tax Credit Allocation Committee (TCAC) review and approval of Subsidy Layering Review (SLR) (not applicable for projects without other government assistance), (3) execution of an AHAP contract, (4) completion of construction, and (5) compliance with Housing Quality Standards. TCAC will not commence the SLR until all funding sources are committed.

D. Term of Commitment

The LACDA may enter into a PBV/PBVASH HAP contract with an owner for an initial term of not less than one year and not more than 20 years. The LACDA will consider requests for an extension of the initial contract term no earlier than 2 years prior to expiration at its sole discretion.

E. Affirmative Marketing

All projects receiving funding under this NOFA must adhere to the LACDA's Affirmative Marketing Requirements. Applicants should note that the Affirmative Marketing requirements may vary for each project. The LACDA's Affirmative Marketing Requirements are listed in the Fair Housing and Accessibility Requirements under the NOFA's Supplemental Documents.

F. Rents

Applicants for PBV/PBVASH must comply with the restrictions in rent calculation contained in 24 CFR Part 982.507. The LACDA shall determine reasonable rents in accordance with federal regulations at the time of the HAP contract approval. The LACDA's Payment Standards can be found on the Section 8 webpage, as well as the NOFA's Supplemental Documents. These Payment Standards must be used to calculate

the gross monthly housing assistance payment for all units, regardless of income levels, for proforma purposes.

G. Utility Allowance

Projects in unincorporated areas or in participating cities must use the Utility Allowance Schedule posted on the LACDA's website. Applicants proposing to request vouchers should note that current HUD regulations do not permit the use of the California Utility Allowance Calculator (CUAC) for units using PBV/PBVASH. *To be eligible for the All Electric schedule, projects must have no gas-powered services such as a centrally-located hot water heater or solar system with gas-powered back-ups.*

H. Supportive Services and Budget

All PBV/PBVASH applications must submit a supportive services plan with the NOFA, including a budget that is responsive to the requirements of the Administrative Plan, Chapter 21, "Project-Based Vouchers" included as Attachment B to this Section. For existing housing that does not currently have a supportive services proponent, please provide an explanation how tenants will be linked with needed services.

I. Davis-Bacon Federal Wages

The Davis-Bacon Act (40 U.S.C. 276a) requires payment of prevailing wage for all projects with nine (9) or more PBV/PBVASH units.

J. Service Coordination/Case Management Costs

The cost of the Resident Services Coordinator and Case Management may be paid from cash flow. Consideration is given to the client load and the expectations delineated in the service plan. The cost of service provision, however, may not be funded from cash flow or from capital financing sources.

IV. EVALUATION PRIORITIES AND SCORING CRITERIA

All applications must provide an appropriate level of supportive services to qualify for PBV/PBVASH vouchers, based on the LACDA's current priorities and goals for the PBV/PBVASH program and in accordance with the NOFA requirements. Therefore, even if an application meets the minimum PBV/PBVASH scoring criteria identified below but fails to score well enough to receive a capital allocation from the LACDA, a PBV/PBVASH allocation will not be awarded.

A. Threshold Requirement: PBVASH Letter of Support

In addition to complying with all of the NOFA Application for Funding requirements, applicants for PBVASH vouchers must include a letter of support from the U.S Department of Veterans Affairs. **This is a threshold item for PBVASH; applications that do not include a letter of support will not be considered.** Applicants may contact Evangelina Ligons at Evangelina.Ligons@va.gov, or (310) 478-3711 x41795 at the Department of Veterans Affairs.

B. Scoring Criteria

As points for PBV/PBVASH are not factored into the overall NOFA score as defined in the NOFA's Scoring Criteria, the Technical Scoring of the PBV/PBVASH Supplemental Application will be conducted separately. Only applications meeting the minimum score criteria of 200 points will be recommended for a voucher allocation to accompany the capital award. The purpose of the additional scoring criteria is to ensure compatibility with HUD's priorities for the use of these vouchers. In addition, omissions and inconsistencies of any kind will be subject to the assessment of negative points. The scoring and evaluation of PBV/PBVASH Supplemental Applications will be subject to the following:

Scoring Criteria	Max Points
De-concentration	100
Readiness for Occupancy	200
Accessibility to West Los Angeles Veteran Affairs Medical Center (PBVASH only)	50
Vouchers Dedicated to Units for Homeless (PBV only)	50
TOTAL	**400**

C. De-concentration

"De-concentration" is an important federal housing policy to expand housing and economic opportunities. Projects are encouraged to locate in census tracts with a poverty rate of 20% or less based on the most current Federal Financial Institutions Examination Council's (FFIEC) data posted on its website.

Deconcentration	Points	Max Points
Census tract with a poverty rate of 20% or less based on the FFIEC data	100	100
Census tract with a poverty rate of 20% or higher based on the FFIEC data	0	

D. Readiness for Occupancy

Readiness for Occupancy	Points	Max Points
Ready for occupancy within 3 years of the NOFA submission deadline	200	200
Ready for occupancy within 3.5 years of the NOFA submission deadline	150	
Ready for occupancy more than 3.5 years after the NOFA submission deadline	75	

E.

Accessibility to West Los Angeles Veteran Affairs Medical Center (PBVASH)

Accessibility	Points	Max Points
Accessible by public transportation via direct line with one half mile or less total walking distance	50	50
Accessible by public transportation with one transfer and one mile or less total walking distance	25	

F. Vouchers Dedicated Exclusively to Units Set Aside for Households Who Are Homeless

PBVs for Homeless	Points	Max Points
Application requests PBVs that will be used only for units occupied by homeless households	50	50
Application requests less than 100% of PBVs for units occupied by homeless households	0	

G. Tie-Breaker

If more than one application receives the same score, priority shall be given to the project with the highest overall score for the NOFA Application for Funding, or the application selected for funding based on criteria established by the LACDA.

V. RESCISSION OF VOUCHERS

If the award of vouchers to a successful applicant is based on capital funding or tax credits being awarded, offered, or guaranteed on the basis of participation in this NOFA, or by other provisions of this NOFA that require specific performance of the successful applicant, and the applicant is later disqualified, defaults upon, or otherwise fails to comply with the requirements stipulated by this NOFA or by any contract, loan or other award or disbursement made as a result of this NOFA, such disqualification, default or noncompliance shall be sufficient grounds for denial or termination of any LACDA award of PBV/PBVASH voucher assistance. Performance criteria may include, but not be limited to, having an approved Supportive Services Plan, or meeting architectural design, zoning, or other requirements. The LACDA shall, in its sole discretion, determine whether the offer or award of project-based assistance should be withdrawn or terminated.

VI. APPLICATION INSTRUCTIONS

Applicants must complete all PBV sections and answer all questions contained in this NOFA application, and provide supporting documentation when required.

To be considered for PBV/PBVASH, applicants must:

1. Apply for capital funds through this NOFA, unless offered as stand-alone vouchers.
   - Comply with all NOFA requirements
2. Apply for PBV/PBVASH by completing the pertinent NOFA sections specific for PBV/PBVASH
   - Review and comply with Governing Regulations
   - Adhere to Application Instructions

A. Section-by-Section Instructions

Project Summary
Complete the questions, including:

1. Complete address of the project;
2. Total number of units in the project;
3. Construction completion date;
4. Number and type of units to receive assistance;
5. Number of units set aside for individuals with mobility impairment (minimum 10% of total units) and the number set aside for individuals with sight or hearing impairments (minimum 4% of total units). Indicate the percentage of total units and accessibility features for each type of unit set aside, and the unit numbers;
6. Type of "qualifying family" receiving assistance (see below); and
7. Attach required HUD Form 2880

Percentage of PBV/PBVASH Units per Project (See 24 CFR Part 983.56)
HUD limits the number of PBV/PBVASH units in a project to no more than the greater of 25 units or 25% of the number of dwelling units in the project, defined as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

HUD permits an exception to 25 units/25% per project cap when PBV/PBVASH units in a project are reserved for "qualifying families," which means:

a) Elderly (62 years and over);
b) Families eligible to receive qualified supportive services.

The LACDA anticipates that applicants may seek exceptions to the 25% per project cap. The NOFA application section regarding the delivery of supportive services must describe outreach for qualifying applicants, qualifying supportive services for qualifying families, monitoring, performance indicators and tracking, and procedures for termination of

families non-compliant with service plans. Note that at least one member of each household must be eligible to receive at least one qualifying supportive service. Also note that neither the LACDA nor the owner may require participation in medical or disability-related services other than drug and alcohol treatment in the case of residents with current substance use disorders as a condition of living in an excepted unit, although such services may be offered. See PIH Notice 2017-21, 24 CFR Part 983.56 (b)(ii)(B) and the Housing Assistance Division's Administrative Plan for the requirements for qualifying supportive services, including rules for families participating in the Family Self-Sufficiency (FSS) Program and leasing excepted units made available for occupancy to qualifying families.

De-concentration
HUD is interested in promoting de-concentration of poverty by prioritizing projects that are located in a census tract where the poverty rate is 20% or lower. Indicate whether the project is located in a census tract meeting this criterion.

For Projects Located in a Census Tract with a Poverty Rate Over 20%
If the project is not located in such a de-concentration area, the applicant must indicate if the census tract in which the project is located meets one of the following criteria:

- Has experienced an overall decline in the poverty level in the last five years (must provide supporting documentation),
- Is a HUD-designated Enterprise Zone, Economic Community or Renewal Community,
- Is undergoing significant revitalization (provide supporting documentation),
- Is likely to experience a decrease in the poverty level due to the development of new market rate units (must provide supporting documentation), or
- Has meaningful educational and economic opportunities (must provide supporting documentation).

Supporting documentation must be attached and deemed acceptable by the LACDA at its sole discretion; mere assertions will not be accepted.

New Construction Projects Only

For New Construction Projects Located in a Census Tract with High Minority Concentration (Over 71% of Households) (24 CFR 983.57(e)):
HUD has established certain site and neighborhood standards for New Construction PBV/PBVASH projects. Applicants must ensure that their projects meet the Site and Neighborhood Standards contained at 24 CFR Part 983.57(e).

Review those requirements and answer the questions with a "Yes" or "No," to indicate whether the project conforms to the requirements.

Supporting documentation must be attached and deemed acceptable by the LACDA at its sole discretion; mere assertions will not be accepted.

Rehabilitated Housing Site and Neighborhood Standards (24 CFR Part 983.57(d))
HUD has established certain site and neighborhood standards for PBV/PBVASH projects that include rehabilitation. Applicants must assure that their projects meet the Site and Neighborhood Standards contained at 24 CFR Part 983.57(d).

After reviewing HUD's Site and Neighborhood Standards contained at 24 CFR Part 983.57(d) answer the questions with "Yes" or "No" to indicate whether the project conforms to the requirements.

Qualifying Resident Population (24 CFR Part 983.56)
As noted in the Project Summary section, HUD limits the number of PBV/PBVASH units in a project to no more than the greater of 25 units or 25% of the total number of units in the project unless PBV/PBVASH units are reserved for "qualifying families," which means:

a) Elderly (62 years and over);
b) Families eligible to receive qualified supportive services.

If the application requests PBV/PBVASH for more than the greater of 25 units or 25% of the total number of units in the project, indicate which population or populations will reside in the exception units.

Contract Term
Prior to Contract Execution
An applicant applying for PBV/PBVASH in conjunction with a proposal for new construction or rehabilitation of units must enter into an AHAP contract with the LACDA within 60 days of the date the entity is notified of successful completion of HUD's subsidy layering review (applicable to projects financed with Low-Income Housing Tax Credits). A single extension of 30 days may be granted at the sole discretion of the LACDA. Failure to enter into an AHAP contract within the specified time period shall be sufficient cause for the LACDA to withdraw the award.

For new construction or rehabilitated housing, a Certificate of Occupancy (new construction) or final permit (rehabilitation) for all units covered by the AHAP contract must be submitted as evidence of housing completion before the HAP contract is executed. The LACDA shall only enter into a HAP contract after receipt of the final Certificate of Occupancy and upon the successful conclusion of a physical inspection of each unit by a Housing Assistance Division inspector, who then indicates in writing that each unit fully complies with HUD's Housing Quality Standards (HQS).

Existing Buildings requesting PBV/PBVASH without construction or rehabilitation are subject to passing the LACDA's Housing Quality Standards prior to entering into a HAP Contract.

Term

The LACDA may enter into a HAP contract with an owner for an initial term of not less than one year and not more than 20 years for each contract unit.

Indicate the length of the project-based voucher term you are requesting. Additionally, indicate whether you would accept an extension of the contract if it were offered at the conclusion of the initial term.

Unit Eligibility (24 CFR Part 983.53)
24 CFR Part 983.53 prohibits PBV/PBVASH in certain types of housing. Answer "Yes" or "No" to these questions to indicate whether your project includes each housing type.

All proposals with new construction or rehabilitation components should be for projects that can realistically be expected to be available for use within two (2) years of construction loan closing.

Civil Rights (24 CFR Part 983.57(b)(2))
Applicants must assure that their projects comply with HUD Civil Rights and disability accommodation requirements referenced at 24 CFR Part 983.57(b)(2). Review those requirements and answer the questions with "Yes" or "No," to indicate whether your project conforms to the requirements.

Housing Accessibility for Persons with Disabilities (24 CFR Part 983.102)
At 24 CFR Part 983.102, HUD lists references to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988. Applicants must review these referenced regulations and assure that their projects meet these requirements. Review the requirements and answer the questions with "Yes" or "No" to indicate whether your project conforms to the requirements.

In addition to the HUD requirements, the project must also be in compliance with all other accessibility requirements identified in the NOFA application.

Broadband Infrastructure (24 CFR Part 983.157)
Any new construction or substantial rehabilitation, as substantial rehabilitation of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

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

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

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

Answer “Yes” or “No” to indicate whether your project conforms to this requirement.

Subsidy Layering Review Requirement

Proposed projects must demonstrate financial feasibility for both development and operations. Applicants must adhere to TCAC underwriting standards in Section 10327 of the TCAC Regulations and the LACDA’s underwriting requirements found in the NOFA Supplemental Documents. Applications that do not include tax credit financing must adhere to LACDA’s underwriting requirements. For tax credit projects, applicants are made aware that TCAC will perform the Subsidy Layering Reviews required for PBV/PBVASH HAP contracts and will be adhering to the HUD Administrative Guidelines for the implementation of the Subsidy Layering Reviews which are included in Attachment B.

ATTACHMENT A

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Number: 2501-0017
Expiration Date: 1/31/2026

Public Reporting Burden Statement: This collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of the requested information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to: U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, R, 451 7th St SW, Room 8210, Washington, DC 20410-5000. Do not send completed HUD-2880 forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. This agency is authorized to collect this information under Section 102 of the Department of Housing and Urban Development Reform Act of 1989. The information you provide will enable HUD to carry out its responsibilities under this Act and ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. This information is required to obtain the benefit sought in the grant program. Failure to provide any required information may delay the processing of your application and may result in sanctions and penalties including of the administrative and civil money penalties specified under 24 CFR §4.38. This information will not be held confidential and may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. §552). The information contained on the form is not retrieved by a personal identifier, therefore it does not meet the threshold for a Privacy Act Statement.

Applicant/Recipient Information * **UEI Number**: * **Report Type**: UPDATE

1. Applicant/Recipient Name, Address, and Phone (include area code)

	* Applicant Name:		
	* Street 1:		
	Street 2:		
	City:	State Abbreviation:	* Zip Code:
	County:		
	* Country:		
	* Phone:		
2.	Employer ID Number (do not include individual social security numbers):		
3.	HUD Program Name:		
4.	Amount of HUD Assistance Requested/Received: $		
5.	State the name and location (street address, City and State) of the project or activity		
	Project Name:		
	* Street 1:		
	Street 2:		
	City:	State Abbreviation:	* Zip Code:
	County:		
	* Country: USA: UNITED STATES		

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. For further information see 24 CFR Sec. §4.3.

☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1-Sep. 30)? For further information, see 24 CFR §4.9.

☐ Yes ☐ No

If you answered "**No**" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested/Expected Sources and Use of Funds. Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name	Department/State/Local Agency Name
* Government Agency Name:	* Government Agency Name:
Government Agency Address:	Government Agency Address:
* Street 1:	* Street 1:
Street 2:	Street 2:
City: State Abbreviation: * Zip Code:	City: State Abbreviation: * Zip Code:
County:	County:
Country:	Country:
* Type of Assistance:	* Type of Assistance:
* Amount Requested/Provided: $	* Amount Requested/Provided: $
* Expected Uses of the Funds:	* Expected Uses of the Funds:

Note: For Part 1, use additional pages if necessary. Add Attachment:

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for assistance or in the planning, development, or implementation of the project or activity.

* Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	* Unique Entity ID	* Type of Participation in Project/Activity	* Financial Interest in Project/Activity ($ and %)			
			$			%
			$			%
			$			%

2. Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

* Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	* City of Residence	* Type of Participation in Project/Activity	* Financial Interest in Project/Activity ($ and %)			
			$			%
			$			%
			$			%

Note: For Part 2, use additional pages if necessary. Add Attachment:

Certification:

I/We, the undersigned, certify under penalty of perjury that the information provided above is true, correct, and accurate.
Warning: If you knowingly make a false statement on this form, you may be subject to criminal and/or civil penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

* Signature:	* Date: (mm/dd/yyyy):

Instructions

Overview.
A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
(2) You are updating a prior report as discussed below; or
(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance):
General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:
1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's EIN, as appropriate, is optional. Individuals must not include social security numbers on this form.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only
Part I contains information to help the applicant determine whether the remainder of the form must be completed. Recipients filing Update Reports should not complete this Part.

If the answer to **either** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.
A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:
1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD and any other source - that have been or are to be, made available for the project or activity. Non-government sources of Form HUD-2880 funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.
This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:
1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower). Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.
1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Unique Entity Identifier (UEI), for non-individuals, or city of residence, for individuals, for each organization and person listed is **optional**.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, or on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required. Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, “person” means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

ATTACHMENT B

ATTACHMENT B

Project-Based Voucher Program Definitions

This section defines some PBV terms that are used in this NOFA. See 24 CFR Part 982 and Part 983 for other Voucher program terms.

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.

ADA: Americans with Disabilities Act.

Admission: The point when the family becomes a participant in the LACDA'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 LACDA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

AHAP: Agreement to enter into a Housing Assistance Payments contract or "Agreement." The Agreement is a written contract between the LACDA and the owner in a form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under the PBV program (24 CFR part 983). When development is completed by the owner in accordance with the Agreement, the LACDA enters into a HAP contract with the owner.

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

Census Tract Locator: Census tracts and their poverty rate can be found at:
https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx by
typing in the complete address and zip code.

Comparable rental assistance: A subsidy or other means to enable a family to obtain decent housing in the LACDA 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.

Disabled:

1. A disabled person is one with an inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death or has lasted or can be expected to last continuously for at least 12 months; or for a blind person at least 55 years old, inability because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period.
2. A developmentally disabled person is one with a severe chronic disability that:
    a. is attributable to a mental and/or physical impairment;
    b. as manifested before age 22;
    c. is likely to continue indefinitely;
    d. results in substantial functional limitations in three or more of the following areas: capacity for independent living, self-care, receptive and expressive language; learning, mobility, self-direction, and economic self-sufficiency AND
    e. requires special interdisciplinary or generic care treatment, or other services which are of extended or lifelong duration and are individually planned or coordinated.
3. A disabled person is also one who has a physical, emotional or mental impairment that:
    a. is expected to be of long-continued or indefinite duration;
    b. substantially impedes the person's ability to live independently;
    c. is such that the person's ability to live independently could be improved by more suitable housing conditions.

Efficiency Units: 0 Bedroom units that have a combination living/sleeping room with a full bath and kitchen.

Elderly family: A family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62, living together; or one or more persons who are at least 62 living with one or more live-in aides.

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

Family Self-Sufficiency Program: The LACDA's Family Self-Sufficiency Program enables families to achieve economic independence and self-sufficiency through assistance with childcare, education, transportation, counseling, job preparation, vocational training and home ownership workshops. Upon becoming employed, FSS participants continue to pay rent in accordance with voucher procedures, but whenever the participant's rent increases, the LACDA makes payments to an interest bearing escrow account in the

family's name. If the family successfully completes the contract obligations within 5 years, the family can apply to graduate from the program and receive the accrued portion of the escrow account.

HAP Contract: The Housing Assistance Payments (HAP) contract is an agreement between the owner and LACDA that sets forth both parties' responsibilities and obligations to each other and commits the LACDA to provide PBV subsidy for the approved units during the term of the HAP contract.

Household: The family and any LACDA-approved live-in aide.

Housing assistance payment: The monthly assistance payment for a PBV unit by the LACDA, 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): HUD's and the LACDA's housing quality standards for the tenant-based Section 8 Housing Choice Voucher Program (HCVP) and the Project-Based Voucher (PBV) program. See 24 CFR 982.401 for HUD's minimum standards. All HQS requirements for both the HCVP and the PBV programs can be found in the Section 8 Administrative Plan, which can be found on the LACDA's website at: www.lacda.org.

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 LACDA.

New Construction: 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 LACDA and the owner for use under the PBV program.

Payment standards: Payment standards are used to calculate the housing assistance payment (HAP) that the public housing authority (PHA) pays to the owner on behalf of the family leasing the unit. Each PHA has latitude in establishing its schedule of payment standard amounts by bedroom size. The range of possible payment standard amounts is based on HUD's published fair market rent (FMR) schedule for the FMR area in which the PHA has jurisdiction. FMR's are based on either the 40th or 50th percentile of rents charged for standard rental housing in the FMR area. A PHA may set its payment standard amounts from 90 percent to 110 percent of the published FMRs, and may set them higher or lower with HUD approval. The PHA must set the payment standard at a level that is high enough to ensure that families are able to afford quality housing while also balancing the need to provide assistance to as many families on the waiting list as possible. The LACDA will review the rent information in the rent reasonableness data

bank and compare it to the payment standards established for the Housing Choice Voucher Program. If the rent reasonableness review indicated that the payment standards are higher than the average rental unit in Los Angeles County, the payment standard for the specific unit size, or all payment standards, will be lowered to reflect the current market rents.

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

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

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

Project-Based Vouchers/PBV Assistance: Section 8 tenant-based vouchers (from the LACDA's Housing Choice Voucher Program portfolio) that are committed to a building under a PBV Housing Assistance Payments (HAP) contract for a specific period of time. Unlike the tenant-based voucher program, project-based vouchers are **not** mobile. When the tenant vacates the unit, the unit will continue to receive PBV subsidy, provided the PBV contract has not been terminated or expired.

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

Qualifying families: Those families that qualify a PBV project to exceed the 25 percent or units 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 LACDA and owner, for use under the PBV program.

Rent to owner. The total monthly rent payable by the family and the LACDA 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.)

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.

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.

Waiting List: The LACDA will use a separate waiting list to administer PBV. All applicants currently on the tenant-based assistance waiting list will be given an opportunity to place their names on the PBV waiting list, with their original date and time intact. New applicants will be given the opportunity to place their names on both the tenant-based waiting list and the PBV waiting list. Owners are expected to make referrals of applicants to this list, to supplement any outreach done by the LACDA.

HUD NOTICES ON PBV/PBVASH

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

Public Housing Agencies
Public Housing Agencies that Administer the Housing Choice Voucher Program; Owners; Other Grantees

NOTICE PIH 2017–21 (HA)

Issued: October 30, 2017

This notice remains in effect until amended, superseded, or rescinded

CROSS REFERENCES

Notice PIH 2009–51

Notice PIH 2011–28

Notice PIH 2011–65 (HA)

Notice PIH 2012–21 (HA)

Notice PIH 2012–32 (HA) H 2017–03, REV-3

Notice PIH 2013–27

Notice PIH 2015–18

Notice PIH 2016–05

SUPERSEDES

Notice PIH 2002–22

Notice PIH 2006–16

Notice PIH 2011–54

Notice PIH 2015–05

Notice PIH 2015–10

Subject: Implementation Guidance: Housing Opportunity Through Modernization Act of 2016 (HOTMA) — Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Provisions

I. Purpose

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) made changes to both the definition of PHA-owned housing (for project-based and tenant-based vouchers) and the project-based voucher (PBV) program. This notice provides guidance on those changes. The provisions covered by this notice were implemented through a *Federal Register* (FR) notice (82 FR 5458) published on January 18, 2017. HUD then published a follow-up notice at 82 FR 32461 on July, 14, 2017, with technical corrections and clarifications to the January 18, 2017, notice (see Part IV below). The January 18, 2017, notice, as revised by the technical correction notice, is referred to as the "January 18, 2017, implementation notice" throughout this notice.

To consolidate PBV guidance, HUD has incorporated content from previous PBV notices into this notice. See Section V, below, for a list of such notices.

II. Background

On July 29, 2016, HOTMA was signed into law (Public Law 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 ("the Act") (42 U.S.C. 1437f). On January 18, 2017, HUD published a notice (82 FR 5458) to implement various HCV provisions, including a new statutory definition of PHA-owned housing (§105 of HOTMA) and changes to the PBV program (§106 of HOTMA). The provisions went into effect on April 18, 2017. This PIH notice provides further guidance on the implementation of these provisions.

The January 18, 2017, implementation notice also implemented two provisions related to inspections for HCV tenant-based and PBV assistance (§101(a)(1) of HOTMA) (see Notice PIH 2017–20, issued October 27, 2017) and a change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§112 of HOTMA) (guidance will be published separately).

The following HOTMA provisions relating to the PBV program were not implemented by the January 18, 2017, implementation notice and consequently are not covered in this notice:

1. Section 106(a)(4)(iii), authorizing a PHA to enter into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP);
2. Section 106(a)(6), authorizing for the use of an operating cost adjustment factor to adjust PBV contract rents;
3. Section 106(a)(7), authorizing the use of owner-maintained, site-based waiting lists for PBV units; and
4. Section 106(a)(8), concerning the environmental review requirements for existing housing.

III. Structure

This notice is comprised of attachments and appendices. Each attachment follows a uniform structure:

1. Title
2. Regulation
3. HOTMA Reference
4. Applicable Program(s)
5. Summary of Change
6. Content

IV. Summary of Technical Corrections

The July, 14, 2017, notice published at 82 FR 32461 ("technical correction notice") corrected several typographic errors and made the following technical corrections and clarifications to the January 18, 2017, implementation notice. All of the corrections and clarifications are reflected in the respective attachments to this PIH notice and are summarized here in the order in which they appear in this notice solely for the sake of convenience:

1. PHA-Owned Units (Attachment A). The original notice used the phrase "50 percent or more" to define a level of control that constitutes a controlling interest and would thus indicate PHA ownership. The technical correction notice replaces that phrase with "more than 50 percent."

2. Percentage Limitation (Program Cap) (Attachment C). The original notice stated that new construction units will qualify for replacement housing if they are located on the "site of the original public housing development." The technical correction notice strikes the phrase "public housing," making clear that the requirement applies broadly to all covered forms of housing assistance that are excluded from the percentage limitation.

3. Income-Mixing Requirement (Project Cap) (Attachment E).

    a. *Supportive services.* HOTMA provides that a family can no longer be required to participate in supportive services as a condition of living in a unit in order for that unit to meet the supportive services exception. The technical correction clarifies therefore that a PHA may not rely solely on a supportive services program that requires a family to engage in supportive services, such as the Family Self-Sufficiency (FSS) program, in order for the unit to meet the supportive services exception. Also, the original noticed stated that if a family "fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit…and the PHA shall cease paying housing assistance payments." HUD determined that this provision could be wrongly construed in a way that conflicts with current FSS requirements, which do not allow termination from the housing assistance program for failure to complete the FSS contract.

    b. *25 percent cap.* The technical correction notice clarifies that the income-mixing cap for projects that are in a census tract with a poverty rate of 20 percent or less is increased from 25 to 40 percent.

    c. *Definition of new construction.* The technical correction notice makes the definition of new construction units that qualify for an exception to the project cap the same as the definition for new construction that applies to the exception for the PBV percentage limitation.

4. Units Not Subject to Percentage Limitation or Income-Mixing Requirement (Attachment F). The original notice excluded from the list of excepted units those units that received assistance under section 201 of the Housing and

Community Development Amendments of 1978 (Flexible Subsidy program). The technical correction notice clarifies that such units are excepted from both the percentage limitation and the income-mixing requirement.

5. Attaching PBV to Certain PHA-Owned Projects Without Following a Competitive Process (Attachment L). The original notice applied a per-unit cost rehabilitation threshold to all replacement housing, including existing housing. The technical correction notice makes clear that there is no per-unit cost requirement for existing housing owned or controlled by a PHA.

V. Notices Superseded by this Notice

To consolidate PBV guidance, the Department has incorporated content from previous PBV notices into this notice. Specifically, this notice supersedes PIH Notices 2002–22, 2006–16, 2011–54, 2015–05, and 2015–10 in their entirety, as described below:

1. Notice PIH 2002–22 (Units with Low-Income Housing Tax Credit Allocations Combined with Housing Choice Voucher Assistance under the Tenant-Based and Project-Based Programs). This notice is rescinded. The provisions of PIH 2002–22 (which were promulgated before HUD had implemented a PBV regulation) align with current PBV regulations, and are thus no longer necessary in a notice. PBV rents for Low Income Housing Tax Credit (LIHTC) units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.

2. Notice PIH 2006–16 (Project-Based Voucher Units with Low-Income Housing Tax Credit Allocations). This notice is rescinded. The "grandfathering" of PBV projects under PIH 2006–16 is no longer necessary, because PBV rents are no longer capped at the LIHTC rent as they once were. PBV rents for LIHTC units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.

3. Notice PIH 2011–54 (Guidance on the Project-Based Voucher Program):

   a. "PHA-owned units" is revised by HOTMA, in which a statutory definition of such units was enacted. (Attachment A)

   b. "Proposal Selection Process" is revised by HOTMA to authorize a PHA to attach PBV assistance to certain PHA-owned projects without following a competitive process. (Attachment L)

   c. Most remaining portions of Notice PIH 2011–54 are unchanged by HOTMA and are included as an appendix to this notice. Note that additional PBV provisions not covered in PIH 2011–54 are also included as part of Appendix II. (Appendix II)

4. Notice PIH 2015–05 (Project-Based Voucher (PBV) Guidance):

   a. "Section I – Timely Reporting of the Family Report (form HUD-50058 and form HUD 50058 MTW) into the Inventory Management System/Public Indian Housing Information Center (IMS/PIC) and Timely Submission Into the Voucher Management System (VMS) for

Project Based Vouchers" is adopted with updates to VMS reporting per VMS *User's Manual* release 8.9.0.0 (April 2016). (Appendix III)

b. "Section II – Maximum Amount of PBV Assistance (20 Percent Limit) in the PBV Program and PHA Submission requirements under 24 CFR 983.6(d)" is superseded by HOTMA, under which a PHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract authorized units, instead of 20 percent of its voucher budget authority. This notice revises the requirements for PHA notification to HUD of the intent to project-base. (Attachments C and D)

c. "Section III – PHA-Owned Units under the PBV Program" is superseded by HOTMA, which revises the definition of PHA-owned units. This notice also covers the role of the independent entity with respect to PHA-owned units. (Attachments A and B)

5. Notice PIH 2015–10 (Project-Basing HUD-Veterans Affairs Supportive Housing (VASH) Vouchers. HOTMA authorizes PHAs to project-base Family Unification Program (FUP) and HUD-Veterans Affairs Supportive Housing (VASH) vouchers without requiring additional HUD approval. Prior to HOTMA, PHAs were prohibited from project-basing vouchers awarded for FUP. HUD-VASH vouchers could be project-based, but required HUD review and approval in accordance with Notice PIH 2015–10 (this applied to HUD-VASH vouchers the PHA chose to project-base and not to HUD-VASH units awarded under a HUD-VASH PBV allocation as described in Attachment F of this notice). This notice supersedes PIH 2015–10 in its entirety.

VI. Applicability to Moving to Work (MTW) Agencies

This notice applies generally to MTW agencies. With respect to any individual MTW agency that is required to submit an Annual MTW Plan to HUD for approval, any specific regulatory provisions addressed in this notice that have been waived as part of the agency's approved Annual MTW Plan do not apply to that agency.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements of this notice were assigned OMB Control Number 2577–0169.

Dominique Blom
General Deputy Assistant Secretary
for Public and Indian Housing

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Attachments

Attachment A: PHA-Owned Units

Regulation: 24 CFR §983.3, 24 CFR §982.352, and 24 CFR §982.628(d)

HOTMA Reference: Sec. 105, which amends Sec. 8(o)(11) of the Act

Applicable Programs: HCV (including the Homeownership Option) and PBV

Summary of Change: HOTMA defines the term "owned by a PHA," overriding the definition of PHA-owned units previously established in regulation under 24 CFR §983.3, 24 CFR §982.352, and 24 CFR §982.628(d). This Attachment A and Attachment B supersede Notice PIH 2015–05, Section III, in its entirety.

Content: For a unit that is PHA-owned according to the HOTMA definition, a PHA must identify and use an independent entity to perform certain functions. Attachment B of this notice discusses the responsibilities of independent entities for PHA-owned units.

The provisions of this Attachment A apply to the PBV program and to the HCV program (including the Homeownership Option), except where otherwise noted.

(1) Definition of PHA-owned units. In accordance with HOTMA, a unit is "owned by a PHA" if the unit is in a project that is:

(a) Owned by the PHA (which includes a PHA having a "controlling interest" in the entity that owns the unit);

(b) Owned by an entity wholly controlled by the PHA; or

(c) Owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

"Controlling interest" means:

(a) Holding more than 50 percent of the stock of any corporation; or

(b) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation); or

(c) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA; or

(d) Holding more than 50 percent of all managing member interests in an LLC; or

(e) Holding more than 50 percent of all general partner interests in a partnership; or

(f) Having equivalent levels of control in other ownership structures. Most ownership structures are already covered in the categories listed above. This last category is meant to cover any ownership structure not already listed in the categories above. Also, under this category (f), a PHA must have more than 50 percent control in that ownership structure (an equivalent level of control) for the project to be considered PHA-owned.

PHA-Owned Project: Example

PHA A holds more than 50 percent of the stock in ABC Projects, and ABC Projects is a corporation that owns the project to which PBV assistance will be attached. In this case, the project is considered PHA-owned.

(2) Units not PHA-owned. The previous definition of PHA-owned (as established in regulation) was more expansive than the HOTMA definition. Under the previous definition, if a PHA held any interest (direct or indirect) in a project, then the project was considered to be PHA-owned. The following list offers examples of scenarios under which a unit is not considered to be PHA-owned under the HOTMA definition:

(a) The PHA holds a fee interest as ground lessor of the property on which the building is situated, but no ownership interest in the building or unit itself.

(b) The PHA holds only a security interest under a mortgage or deed of trust on the unit; or

(c) The PHA has only a non-controlling interest in an entity that owns the unit or in the managing member or general partner of an entity that owns the unit. Following the example above, assume PHA A holds only 45 percent of ABC Project's stocks, which is below the threshold that constitutes a controlling interest in the corporation that owns the project. In this case, the project is not considered to be PHA-owned.

As it relates to the PBV program, the new section 8(o)(13)(N) of the Act allows a PHA to attach PBVs to a project in which the PHA has an ownership interest or over which the PHA has control, without following a competitive process, but only in cases in which the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. In this context, the PHA's ownership interest does not have to meet the definition of the term "owned by a PHA" established by section 105 of HOTMA. Information on what constitutes an ownership interest or control for purposes of section 8(o)(13)(N) is found in Attachment L of this notice.

(3) Classifying a unit as not PHA-owned. The new definition of PHA-owned is in effect as of April 18, 2017, and applies to all PBV projects. An opinion from the PHA's legal counsel that a unit is not PHA-owned is required under the following two scenarios:

(a) The change in definition results in a project that was PHA-owned under the previous definition and was under HAP or AHAP before April 18, 2017, to no longer be PHA-owned.

(b) A change in ownership structure results in a project no longer meeting the definition of PHA-owned in effect as of April 18, 2017.

The project remains classified as PHA-owned for purposes of program requirements and monitoring until the PHA obtains an opinion from its legal counsel that the project is no longer PHA-owned for a project that fits into one of the above two categories. Except for the two instances described above, a PHA is not required to obtain a legal opinion when determining if a unit is PHA-owned. Once the legal opinion has been

obtained, the PHA is no longer required to use an independent entity to perform the applicable responsibilities (as described in Attachment B) concerning the project. The PHA must keep the legal opinion in its files for the length of the PBV HAP contract, the HCV HAP contract, or Homeownership assistance, as applicable.

(4) Classifying a PBV project as PHA-owned due to a change in ownership. If an ownership structure changes in a manner that would cause a project to become classified as PHA-owned (e.g., the PHA ownership interest is increased to an amount greater than 50 percent), then the PHA must identify to the local HUD Field Office of Public Housing, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform the applicable independent entity responsibilities. See Attachment B of this notice for more information on independent entities.

(5) Contract requirements for PHA-owned units. Because the HAP contract administrator and the owner cannot be the same legal entity (i.e., the PHA acting as contract administrator cannot execute a contract with itself as the owner of the PBV or HCV units), the PHA must establish a separate legal entity to serve as the owner. Such entity may be one of the following:

(a) A non-profit affiliate or instrumentality of the PHA;

(b) A limited liability corporation;

(c) A limited partnership;

(d) A corporation; or

(e) Any other legally acceptable entity recognized under State law.

Such an entity would serve as the owner only for purposes of execution of the HAP contract. In cases where the independent entity is required to notify the PHA, the notification requirement is satisfied by notifying the PHA itself. The entity that is serving as the owner for purposes of contract execution does not need to be notified as well.

(6) Rental Assistance Demonstration (RAD). As it pertains to conversions to the PBV program under RAD, the definition of control/ownership provided under the RAD notice (PIH–2012–32 (HA) H–2017–03, REV-3 or successor) is used specifically to determine whether a PHA retains sufficient control over a project for purposes of HUD's requirement for ownership or control of the Covered Project by a public or non-profit entity for RAD conversions.

For purposes of determining whether the PHA will be required to use an independent entity to perform certain functions concerning the project, the provisions of this notice apply to RAD PBV conversions. This means that, under certain circumstances (such as when the PHA holds only a fee interest as ground lessor in the property in which the unit is situated), a project may meet the RAD definition of ownership or control, but may not be considered to be PHA-owned under this notice. In such a circumstance, the PHA would not be required to use an independent entity.

Attachment B: PHA-Owned Units and Independent Entities

Regulation: 24 CFR §983.59, 24 CFR §982.352, and 24 CFR §982.628(d)

HOTMA Reference: Not applicable

Applicable Programs: HCV (including the Homeownership Option) and PBV

Summary of Change: HUD is changing the existing policy for independent entity review and approval by superseding the requirements established under Section III of Notice PIH 2015–05. Notice PIH 2015–05 required a PHA to submit documentation that demonstrated or supported the independent nature of the parties' relationship. With the publication of this notice, PHAs must, instead, submit a joint certification as explained in paragraph 3, HUD independent entity approval, below.

The requirement to submit a joint certification is a change to HUD policy as laid out in the aforementioned PIH notice; it is not a change resulting from the enactment of HOTMA. HUD expects that this change will ease PHA administrative burden because PHAs will no longer need to produce documentation (such as financial statements, legal documents showing the structure of each organization, etc.) showing the independent nature of the parties. While HUD retains the right to request more information, HUD expects that this will be unnecessary in the majority of cases. This attachment also provides some examples of independent entities and includes tables that provide a visual representation of independent entity functions.

Content: If a unit is considered PHA owned (based on the definition of PHA-owned unit, as explained in Attachment A of this notice), then Section 8(o)(11) of the Act requires that the unit of general local government or a HUD-approved independent entity perform certain functions for such units. If the PHA itself is the unit of general local government or an agency of such government, then the next level of general local government may perform such functions without HUD approval. For example, if the PHA itself is the city or an agency of the city, then the county or state government may perform the functions without HUD approval.

In cases where there is no next level of general local government (e.g., the PHA is an agency of the state) or the PHA opts not to have independent-entity functions performed by the next level of general local government, then the PHA must retain the services of an independent, HUD-approved public or private entity.

For purposes of this attachment, the term "independent entity" refers to either the unit of general local government or the HUD-approved independent entity, as applicable. The provisions of this attachment apply to the HCV program (including the Homeownership Option) and the PBV program, except where otherwise noted.

PHAs are encouraged to maintain all documentation related to independent entity functions and approvals in the project file for the duration of the HAP contract.

(1) Relationship between the PHA and the independent entity. As stated in previous HUD guidance, the independent entity and PHA must be autonomous. That is, the parties must not be connected legally, financially (except with regard to compensation for services performed for PHA-owned units), or in any other manner that could cause either party to be improperly influenced by the other. For example, the independent entity must not include individuals who have a relationship with the PHA or the project that would interfere with the entity's exercise of independent judgment in

carrying out responsibilities as they relate to the PHA-owned units.

Further, the independent entity must have the ability to perform its responsibilities in an unbiased manner, and the PHA must not take any action that could prevent the independent entity from making unbiased determinations related to its responsibilities. Examples of independent entities include, but are not limited to: PHA vendors, real estate agencies, non-profit social services agencies with affordable housing experience, and law firms specializing in affordable housing law (for example, to perform the review of the PBV selection process).

(2) Independent entity functions. The independent entity is responsible for performing certain functions for PHA-owned units. The table below provides an overview of each function to be performed by the independent entity, and its regulatory basis, under the PBV program and the HCV program (including the Homeownership Option). Any additional information on a particular function is discussed following the overview table.

Table 1: Overview of Independent Entity Functions

Function	Applicable Program: Regulatory Basis
Review the PHA's PBV selection process.	PBV: 24 CFR §983.51(e)
Establish PBV contract rents (initial rent to owner and redetermined rent to owner).	PBV: 24 CFR §983.59(b)(1) PBV: 24 CFR §983.301(g)
Determine rent reasonableness.	PBV: 24 CFR §983.303(f)(1) HCV: 24 CFR §982.352(b)(1)(iv)(A)(1)
Determine reasonableness of the sales price and any PHA-provided financing under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(iv)
Provide a copy of the rent reasonableness determination to the PHA and the HUD field office where the project is located.	PBV: 24 CFR §983.303(f)(2)
Notify the PHA and the family of the rent reasonableness determination.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(1)
Assist the family in negotiating the rent with the owner.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(2)
Establish term of initial and any renewal HAP contract as required in 24 CFR §983.205.	PBV: 24 CFR §983.59(b)(2)
Inspect units.	PBV: 24 CFR §983.59(b)(3)

Function	Applicable Program: Regulatory Basis
	PBV: 24 CFR §983.103(f)(1) HCV: 24 CFR §982.352(b)(1)(iv)(A)(3) Homeownership: 24 CFR §982.628 (d)(3)(i)
Provide a copy of the inspection report to PHA and HUD field office where the project is located.	PBV: 24 CFR §983.103(f)(2) and (3)
Communicate the results of the inspection to the family and the PHA.	HCV: 24 CFR §982.352(b)(1)(iv)(A)(3)
Review the inspection report prepared by the independent inspector designated by the family under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(ii)
Review the contract of sale under the Homeownership Option.	Homeownership: 24 CFR §982.628 (d)(3)(iii)

(a) Review of the PHA's PBV selection process. As it relates to the PBV selection process, the PHA may either choose to use an independent entity or request that the local HUD Office of Public Housing perform the review. Non-competitive selections must also be reviewed to ensure that the selection was done properly. At a minimum, the PHA must submit the following to the HUD Field Office or the independent entity, as applicable:

(i) All proposals submitted for PBV assistance in connection with the particular selection, including proposals submitted for selection in accordance with 24 CFR §983.51(b)(2);

(ii) A copy of the relevant section of the PHA's Administrative Plan;

(iii) A copy of any standard operating procedures, worksheets, checklists, or any other work product used in the selection of PBV proposals; and

(iv) If the proposal was selected pursuant to a request for proposals in accordance with 24 CFR §983.51(b)(1), a copy of the solicitation; or

(v) If the proposal was selected pursuant to a qualifying previous competition in accordance with 24 CFR §983.51(b)(2), a copy of the proposal for the previous competition, and any award letter provided in connection with the previous competition. If proposals from a previous competition are not retrievable, other documentation that demonstrates that the requirements of 24 CFR §983.51(b)(2) are met (e.g., proposal selected within 3 years of the PBV proposal selection date, proposal

selected in accordance with the applicable program's competitive selection requirements, etc.).

The HUD Field Office or HUD-approved independent entity may request from the PHA additional documentation necessary to complete the review process. The PHA's selection procedures must apply to all PBV proposals and must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give undue preferential treatment (e.g., additional points) to PHA-owned units. The HUD Field Office or HUD-approved independent entity must provide a letter stating that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA's Administrative Plan before the PHA may finalize the selection process.

Under HOTMA, certain PBV units may be attached to a project without a competitive selection process. More information may be found in Attachment L of this notice.

The review of the PHA selection process is waived for RAD PBV conversions.

(b) PBV rent determinations. The independent entity determines rent (initial rent to owner and redetermined rent to owner) for PHA-owned units in accordance with the same requirements as for other PBV units. PBV rent determination requirements are found at 24 CFR Part 983, Subpart G.

Rent to owner is redetermined by written notice from the independent entity to the PHA specifying the amount of the redetermined rent. The independent entity notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. Such amendments must be documented by a signed exhibit to the HAP contract.

The independent entity redetermines rent for RAD PBV units. That is, the independent entity is responsible for conducting the rent reasonableness determination and for processing Operating Cost Adjustment Factor (OCAF) adjustments for RAD PBV units.

(c) Term of existing PBV HAP contracts. The term of a HAP contract and any HAP contract extension for PHA-owned units must be agreed upon by the PHA and the independent entity. HOTMA provides that the initial term of a HAP contract may be up to 20 years (increased from 15 years) and that a HAP contract may be extended for an additional 20 years (again, increased from 15 years). See Attachment G of this notice for more information about this change.

(d) Inspection requirements. Independent entities are responsible for conducting all required inspections for PHA-owned units in accordance with program requirements. The PHA must provide families with up-to-date contact information for the independent entity and explain that a family requesting an inspection of the unit makes such a request directly to the independent entity. See Appendix IV of this notice for more information on HCV, Homeownership, and PBV inspection requirements.

(3) HUD independent entity approval. This section discusses what information must be submitted, when it must be submitted, and other requirements related to the HUD independent entity approval process.

(a) What information to submit. The PHA must include in its submission to the local HUD Office of Public Housing a joint PHA and independent entity certification, which certifies that the PHA and the proposed entity have no legal, financial, or any other connection that could cause either party to be improperly influenced by the other and that the proposed independent entity will perform its responsibilities as it relates to the PHA-owned units in an unbiased manner. The certification must be dated and signed by the executive director, or equivalent position, of the PHA and the independent entity. The certification must clearly state the name, address, and point of contact for both the PHA and the proposed independent entity.

The HUD Office of Public Housing retains the discretion to accept the certification on its face or to request additional information, or to use information available to the HUD Office, to question the validity of the certification.

(b) When to submit. The PHA must submit the independent entity for approval before the function to be performed by the entity takes place. In determining when to submit the independent entity for approval, a PHA must consider the functions that are required to be performed by the independent entity, whether the PHA will use more than one independent entity for different functions, the HUD processing time, and how all of these elements interplay with the expected action (HCV HAP contract execution, homeownership closing, PBV proposal selection, etc.).

(c) Using different independent entities. If the PHA plans to use different independent entities to perform different functions, or different independent entities at different projects, the PHA must submit for approval each independent entity it plans to use and identify the function the entity will perform. PHAs are not required to submit all independent entities at the same time.

(d) Previously approved independent entities. Once an independent entity has been approved by HUD, the PHA may use that same independent entity for other PHA-owned units or for other functions. If the PHA will use an independent entity to perform a function other than the function for which the independent entity was previously approved, then the PHA must certify in writing to HUD that it will use a previously HUD-approved independent entity to perform a new function, which must be identified in the certification. The certification must include the name of the independent entity and be dated and signed by the executive director, or equivalent position, of the PHA. The certification must clearly state the name, address, and point of contact for both the PHA and the independent entity. The entity must be qualified to perform the function or the local HUD Office of Public Housing may deny approval. For example, a law firm that was previously approved to review a PBV selection review process

may not be an appropriate independent entity for the purpose of conducting inspections.

(4) Payment for independent entity services. Payment for services performed by the independent entity are the responsibility of the PHA (24 CFR 983.59(d)). The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve (i.e., Unrestricted Net Position)). The PHA may not use other HUD program receipts to compensate the independent entity for its services. MTW agencies may use other sources of funds for these purposes provided that such use is consistent with the MTW agency's HUD-approved MTW plan. Neither the PHA nor the independent entity may charge any family that occupies or will occupy a PHA-owned unit any fee for the services provided by the independent entity.

Attachment C: Percentage Limitation (Program Cap) and PHA Submission Requirements

Regulation: 24 CFR §983.6

HOTMA Reference: Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act

Applicable Program: PBV

Summary of Change: Under HOTMA, a PHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract (ACC) authorized units, instead of 20 percent of its voucher budget authority. HOTMA also establishes a 10 percent exception to this program cap (discussed in Attachment D), for units that meet the exception criteria. The changes implemented by the January 18, 2017, implementation notice supersede the reporting requirements at 24 CFR §983.6 and are explained in detail in paragraph (2), below. This Attachment C supersedes Notice PIH 2015–05, Section II, in its entirety.

Content: As described below, HOTMA authorizes a PHA to attach PBV assistance to not more than 20 percent of its ACC authorized units instead of 20 percent of its voucher budget authority. For purposes of this provision, the term "authorized units" means the number of units under the PHA's current ACC. A PHA may confirm this number in the Inventory Detail feature of the Inventory Management System/PIH Information Center (IMS/PIC). IMS/PIC may be accessed at the following HUD webpage: Inventory Management System (IMS)/PIH Information Center (PIC).

HOTMA did not change the requirement that a PHA provide advance notice to its HUD field office of its intent to project-base vouchers. While a PHA is no longer required to submit evidence of sufficient budget authority as part of this advance notice, it must still ensure that it will have budget authority sufficient to cover the PBV HAP contract at the point of contract execution.

Among other things, this Attachment describes what must be submitted to HUD, when it must be submitted, how it must be submitted, and how HUD will respond.

(1) Calculations. Appendix I provides PBV program cap calculation instructions that complement a sample *PBV Program Cap Calculation Worksheet*. The sample worksheet is available at the following webpage: PBV Program Cap Calculation Worksheet. Use of the sample worksheet is optional, and submission to HUD is not required.

(2) Revised requirements for notification to HUD.

(a) What must be submitted. The PHA must submit to the local HUD Office of Public Housing all of the following information:

(i) The number of units authorized under the ACC for the PHA;

(ii) The number of PBV units entirely excluded from the percentage limitation (as described in Attachment F of this notice);

(iii) The number of units qualifying under the 10 percent program cap exception category (as described in Attachment D of this notice);

(iv) The number of units currently committed to PBV (excluding those PBV

units meeting an exception under Attachment D or F of this notice). To arrive at the "number of units committed to PBV," total the number of units that are:

(I) Currently under PBV HAP contract;

(II) Under an Agreement to Enter into HAP contract (AHAP); and/or

(III) Covered by a notice of proposal selection (24 CFR §983.51(d)); and

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

(b) When a PHA must submit information to HUD. The above information must be submitted no later than 14 calendar days prior to undertaking any of the following actions:

(i) Issuing a request for proposals (RFP) (24 CFR §983.51(b)(1));

(ii) Selecting a project based on a previous competition (24 CFR §983.51(b)(2)); or

(iii) If applicable, selecting a project without following a competitive process (see Attachment L of this notice).

(c) How to submit information to HUD. The required information must be submitted by email to pbvsubmission@hud.gov.

(d) HUD response. HUD will respond to the submission by email, identifying whether HUD has identified any issues with the submission. For example, if there is a material error in the PHA's calculations that would result in the PHA exceeding the 20 percent percentage limitation, HUD will inform the PHA of this via email. A PHA must await a response from HUD prior to proceeding with the proposal.

HUD's review and approval of the submission does not mean that it has confirmed availability of the PHA's budget authority, as this is the responsibility of the PHA.

Attachment D: PBV Percentage Limitation — 10 Percent Increase for Eligible Units

Regulation: 24 CFR §983.6

HOTMA Reference: Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act

Applicable Program: PBV

Summary of Change: Under HOTMA a PHA may project-base an additional 10 percent of its ACC authorized units above the 20 percent program limit, provided the additional units fall into one of the eligible exception categories.

Content: In this Attachment, the eligible exception categories are explained. The units eligible for inclusion in this 10 percent exception category may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. For example, if 10 percent of ACC authorized units is 100, the PHA may project base 50 units for homeless families and 50 units for units providing supportive housing to persons with disabilities or elderly persons.

(1) Exception Categories.

(a) Homeless. The units are specifically made available to house individuals and families who meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR §578.3. The definition of homeless is included below for convenience:[1]

(i) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

- An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
- An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(ii) An individual or family who will imminently lose their primary

[1] See Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program; Interim Final Rule.

nighttime residence, provided that:

- The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- No subsequent residence has been identified; and
- The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;

(iii) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 1437e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
- Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(iv) Any individual or family who:

- Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to

their primary nighttime residence;

- Has no other residence; and
- Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

(b) Veterans. The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define "veteran" in its Administrative Plan for purposes of determining if the units are eligible for this exception. For example, a PHA may choose to include in its definition of "veteran" an individual with an "other than dishonorable" discharge status who is ineligible for healthcare provided through the Veterans Health Administration. PHAs have discretion in establishing verification of eligibility.

HUD-awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding are already excluded from the program cap and are not to be included under this 10 percent exception category. See Attachment F of this notice for additional information.

(c) Supportive services. The units provide supportive housing to persons with disabilities or to elderly persons. For the purpose of this exception, supportive housing means: A project that makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):

- meal service adequate to meet nutritional need;
- housekeeping aid;
- personal assistance;
- transportation services;
- health-related services;
- case management;
- child care;
- educational and employment services;
- job training;
- counseling; or
- other services designed to help the recipient live in the community as independently as possible.

A PHA must include in its Administrative Plan the types of services offered to families for a project to qualify for the exception and the extent to which such services will be provided (e.g., length of time services will be provided to a

family, frequency of services, and depth of services). Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA must not require participation in the supportive services as a condition of living in an excepted unit.

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

(d) Poverty rate of 20 percent or less. The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. A project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located. To view poverty rates by census tract, click here.

The above categories are separate and distinct from exceptions to the income-mixing requirement (project cap), which limits the number and percentage of units within a particular project to which PBV assistance may be attached. These exceptions are discussed in Attachment E of this notice. (Units that are exempt from both the program cap and the project cap are discussed in Attachment F.)

(2) Impact on existing contracts. PBV units that fall into one of the four categories listed above may be covered by this 10 percent exception authority only if the units are covered under a HAP contract that was first executed on or after April 18, 2017 (the effective date of the January 18, 2017, implementation notice).

Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for this 10 percent exception authority.

A PHA need not meet the 20 percent program cap before it can designate eligible units for the 10 percent exception category. For example, if a PHA has project-based 10 percent of its units under the percentage limitation and wants to project-base 5 percent of its units under the 10 percent exception category, it may do so. This PHA would have 10 percent remaining under the percentage limitation and 5 percent remaining under the 10 percent exception authority.

A PHA proposal that would result in the PHA exceeding either the 20 percent program cap or the 10 percent exception from the program cap will be rejected by the HUD field office. As long as a PHA has not exceeded the 30 percent limit, it may correct its proposal by moving units from one category to the other, as long as only eligible units are counted toward the 10 percent exception from the program cap.

(3) Submission requirements. See Appendix I on calculating the number of voucher units that may be project-based. If a PHA wishes to add PBV units under this exception authority, then the PHA must identify the exception category for which the additional units will be project-based and the specific number of units that qualify under the exception category in its transmittal of the submission requirements described in Attachment C of this notice.

Attachment E: Income-Mixing Requirement (Project Cap)

Regulation: 24 CFR §983.56(a), 24 CFR §983.56(b)(1) and (2), 24 CFR §983.261(c) and (d)

HOTMA Reference: Sec. 106(a)(3), which amends Sec. 8(o)(13)(D) of the Act

Applicable Program: PBV

Summary of Change: HOTMA amends the income-mixing requirement for an individual project (i.e., the project cap) so that the limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. Previously, the limitation was 25 percent of the units in a project.

HOTMA also makes changes to the exceptions to the project cap. The following units are excluded from the 25 percent or 25-unit project cap:

- Units exclusively serving elderly families.
- Units housing households eligible for supportive services available to all families receiving PBV assistance in the project.

Also, units in projects that are in a census tract with a poverty rate of 20 percent or less are subject to a higher (40%) cap.

Lastly, HOTMA provides that HUD may establish additional requirements for monitoring and oversight of projects in which more than 40 percent of the dwelling units are assisted under a PBV HAP contract.

The previous statutory definition of project for these purposes remains the same. That is, a project may be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. See Appendix II, paragraph (7), of this notice for more information.

Content:

(1) Project cap. The limitation on the number of units that may be project-based in an individual project is now the greater of 25 units or 25 percent of the units in a project. Below is an example to help illustrate this change. This example is meant only to illustrate this change, and does not take into account the exceptions discussed later in this section.

Project Cap: Example

Total Units in ABC Project	60
Post-HOTMA Project Cap (greater of 25 units or 25 percent of units in project)	25
Pre-HOTMA Project Cap (25 percent of units in project)	15

If a project contains 25 or fewer units, the PHA may place every unit in the project under the PBV HAP contract.

(2) Exceptions to project cap. An exception to the project cap means that a particular category of units is excluded altogether from the 25 percent or 25-unit project cap. As of April 18, 2017, the exceptions to the project cap are:

- Units exclusively serving elderly families.
- Units housing households eligible for one or more supportive services available to all families receiving PBV assistance in the project.

A PHA is not limited with respect to the number of units in a project it can make available for an excepted category or categories. A PHA may designate 100 percent of the units in a project for occupancy by an excepted category (or categories).

Prior to HOTMA, dwelling units specifically made available for households comprised of elderly families, families with a household member with disabilities, and families receiving supportive services were excepted from the project cap. HOTMA retains the exception for elderly families. It modifies the exception for families receiving supportive services so that such families must simply be "eligible for" supportive services (see section (3)(b) of this attachment). HOTMA eliminates the exception for families with a household member with disabilities.

With respect to PBV units that were excepted from the income mixing requirement under the pre-HOTMA exception for families with a household member with disabilities, the PHA must generally continue to operate under the terms of that existing contract. In other words, the pre-HOTMA exception for families with a household member with disabilities continues to apply for those units and the PHA would refer families with a household member with disabilities to the owner to fill vacancies for units covered by this pre-HOTMA exception under the HAP contract. See section 6 of this attachment for information on the impact of the HOTMA changes on excepted units for existing contracts and how changes can be made to serve additional populations.

Exceptions to Project Cap: Example

ABC Project has a total of 60 units. Twenty of the 60 units are PBV units specifically for elderly families. Units exclusively serving elderly families are excepted from the project cap. The project cap for ABC Project is 25 units (greater of 25 units or 15 units (25 percent of units in project)). A total of 45 units may be project-based in ABC Project (project cap of 25 plus the 20 excepted units).

(3) Qualifying families. With respect to units excepted from the income mixing requirement under the HOTMA exception categories, the PHA may refer only qualifying families for occupancy of excepted units under (a) and (b) below.

(a) Units for elderly families. Units that are exclusively made available to elderly families are excepted from the project cap. The term elderly family is defined in 24 CFR §5.403 as follows: "Elderly family means a family whose head

(including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides."

It is not necessary that the entire project or buildings within the project be designated as elderly in order for the exception to apply. Under the PBV program, projects are not "designated" as elderly as is the case in other programs, such as the Public Housing or Section 202 Elderly Programs. The owner must identify under the HAP contract, however, the particular number of units that are exclusively made available for elderly families. As each unit turns over, the PHA may amend the HAP contract to transfer the exception status from one unit to another, provided it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 24 CFR §983.207(a).

As provided under 24 CFR §983.262(e), a PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death or long-term or permanent hospitalization or nursing care of the elderly family member), the elderly family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family, unless it is possible to transfer the exception status to another unit as described in the paragraph above.

(b) Units for households eligible for supportive services. Under HOTMA, dwelling units that are exclusively made available to "households eligible for supportive services that are made available to the assisted residents of the project, according to the standards for such services the Secretary may establish" are excepted from the project cap. Previously, the supportive services exception applied only if the family was receiving supportive services.

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

The exception applies to any household eligible for the supportive services and is not limited to households with a family member with a disability. The supportive services do not need to be provided by the owner or on-site, but the services must be reasonably available to the families receiving PBV assistance

in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible.

A PHA must include in its Administrative Plan the type of services offered to families for the units to qualify under the exception and the extent to which such services will be provided (e.g., length of time services will be provided to a family, frequency of services, and depth of services). A PHA may offer FSS as part of the supportive services package, but must not rely solely on FSS to meet the exception.

HUD encourages PHAs to consider how the structure of their supportive services package may impact a family's continued eligibility for the supportive services and the unit's excepted status. The unit loses its excepted status if the family becomes ineligible for the supportive services during its tenancy, provided that: (i) the family becomes ineligible for *all* supportive services available to the family, *and* (ii) the family becomes ineligible for reasons other than successfully completing the supportive services objective. A family that becomes ineligible for the supportive services during its tenancy cannot be terminated from the program or evicted from the unit. If the unit loses its excepted status, and the PHA does not want to reduce the number of excepted units in its project-based portfolio, the PHA may:

(i) Substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with 24 CFR §983.207(a). A PHA may wish to consider whether adding units to the HAP contract is an appropriate strategy to allow for the substitution of units. For example, Bay View Project has a total of 100 units. 50 of those units are under a PBV HAP contract and are all excepted units. In this case, the PHA may add non-excepted units to the contract (provided it is possible to do so under PBV requirements) to allow for the substitution of the excepted unit for the non-excepted unit. See section 6 of this attachment for more information on adding units to existing HAP contracts.

(ii) Remove the unit from the PBV HAP contract, and provide the family with tenant-based assistance. Once the family has moved from the unit, add the unit back to the contract in accordance with 24 CFR §983.207(b), as amended by HOTMA. Any family newly admitted to the unit must be eligible for supportive services in order for the unit to retain its excepted status.

In the case of a family that chooses to participate in the supportive services, as described by the PHA in the Administrative Plan, and successfully completes the supportive services objective, as defined by the PHA in its Administrative Plan, the unit will continue to be an excepted unit under this category for as long as the family resides in the unit.

(4) Other units not subject to the percentage limitation and project cap. The details and requirements of this exception category are described in Attachment F of this notice.

(5) Increased project cap. Up to the greater of 25 units or 40 percent (instead of the greater of 25 units or 25 percent) of the units in a project may be project-based when the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. A project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located. To view poverty rates by census tract, click here.

HOTMA also provides that the 40 percent unit exception applies to projects in areas where vouchers are difficult to use, as determined by HUD. HUD has not yet defined and implemented the exception authority for these "difficult to use" areas. Therefore, the 40 percent exception applies only to census tracts with poverty rates of 20 percent or less until further notice.

Increased Project Cap: Example

ABC Project has a total of 80 units. ABC Project is located in a census tract with a poverty rate of 20 percent or less. The project cap for ABC Project is 32 units (greater of 25 units or 32 units (40 percent of units in project)).

(6) Effect on existing contracts. Owners under HAP contracts in effect prior to April 18, 2017, the effective date of the January 18, 2017, implementation notice, remain obligated by the terms of those HAP contracts with respect to the requirements that apply to the number and type of excepted units in a project. That is, the owner must continue to designate the same number of contract units and assist the same number and type of excepted units as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements.

Effect on Existing Contracts: Example

An owner has a PBV HAP contract for a 20-unit project, and the HAP contract provides that 15 of those units were excepted from the 25 percent income-mixing requirement, because the units are designated for elderly families. The owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.

The PHA and owner may agree to change such HAP contract requirements as it pertains to the exception categories of elderly families and families eligible for

supportive services. The PHA and owner must not change the terms of an existing HAP contract to add a new category of excepted unit (such as those under a rent restriction as defined in Attachment F of this notice), because those provisions may only be applied to contracts that become effective on or after April 18, 2017, the effective date of the January 18, 2017, implementation notice.

For projects that are using the former supportive services statutory exemption (which required that the family be receiving the supportive services) and /or the exemption for families with a household member with disabilities, the PHA and the owner will continue to operate under the pre-HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the PHA and the owner agree by mutual consent to change the conditions to conform with the HOTMA requirement. The PBV HAP contract may not be changed to conform with the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g., the excepted units at the project include units designated for families with a household member with disabilities, and changing to the HOTMA standard would result in those units no longer being eligible as excepted units unless the owner makes supportive services available to all assisted families in the project).

A HAP contract may be amended, at the discretion of the PHA, to add additional PBV units in the same project. PHAs may use this amendment process to add units where applying the new project cap definition results in more PBV units. For example, ABC Project has a total of 60 units. The pre-HOTMA project cap was 15 units. The post-HOTMA project cap is 25 (greater of 25 units or 15 units (25 percent of units in project)). The existing PBV HAP contract had no excepted units. The PHA, at its discretion, may amend the HAP contract to add the 10 additional units that result from the HOTMA project cap definitional change.

As it pertains to the amendment process to add new units to an existing HAP contract, HOTMA overrides existing regulation, so that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures. See Attachment J for more information about this change. All other requirements of 24 CFR §983.207(b) must be met, including not exceeding the 20 percent program cap (see Attachment C of this notice for more information on the 20 percent program cap).

(7) No HUD notification requirement. Unlike the program cap, there is no requirement to submit PBV project cap information to HUD.

Attachment F: Units Not Subject to Percentage Limitation (Program Cap) or Income-Mixing Requirement (Project Cap)

Regulation: 24 CFR §983.6, 24 CFR §983.56(a), 24 CFR §983.56(b)(1) and (2)

HOTMA Reference: Sec. 106(a)(2), which amends Sec. 8(o)(13)(B) of the Act, and Sec. 106(a)(3), which amends Sec. 8(o)(13)(D) of the Act

Applicable Program: PBV

Summary of Change: HOTMA provides that certain units do not count toward the PBV percentage limitation and are exempt from the income-mixing requirement when PBV assistance is attached to them.

Content: The following categories of units are excluded from both the percentage limitation and the income-mixing requirement if placed under HAP contract on or after April 18, 2017:

(1) Excepted units. Units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation or the income-mixing requirement.

The following categories of units in (a) or (b) are eligible for this exception provided they also meet the conditions described in (c) below:

(a) The unit received one of the following forms of HUD assistance:

(i) Public Housing Capital or Operating Funds (section 9 of the Act);

(ii) Project-Based Rental Assistance (section 8 of the Act), including units assisted under the section 8 moderate rehabilitation (Mod. Rehab.) program and Mod. Rehab. single-room occupancy (SRO) program;

(iii) Housing for the Elderly (section 202 of the Housing Act of 1959);

(iv) Housing for Persons with Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act);

(v) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965);

(vi) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act); or

(vii) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

or

(b) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(i) Section 236;

(ii) Section 221(d)(3) or (d)(4) BMIR;

(iii) Housing For the Elderly (section 202 of the Housing Act of 1959);

(iv) Housing for Persons With Disabilities (section 811 of the Cranston-

Gonzalez National Affordable Housing Act); or

(v) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception.

(c) In addition to having received HUD assistance or having been subject to rent restrictions as described in parts (a) and (b) above, the unit must meet the following applicable conditions to qualify for this exception:

(i) PBV Existing and Rehabilitated Units.

For units that will be placed under PBV as existing or rehabilitated units:

(I) The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017; *and*

(II) In the 5 years prior to the date the PHA either (aa) issued the RFP under which the project was selected, or (bb) selected the project based on a prior competition or without competition, the unit met at least one form of assistance or was subject to a rent restriction as described above. If the existing/rehabilitated project was selected based on a prior competition or without competition, then the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR §983.51(d).

(ii) PBV New Construction.

A newly constructed unit developed under the PBV program may also be excluded from the limitation, provided the unit qualifies as a replacement unit. The unit must meet *all* of the following requirements to meet this exception to the limitation:

(I) The unit that the PBV newly constructed unit is replacing (i.e., the original unit) must have received one of the forms of HUD assistance or must have been subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either:

(aa) Issued the RFP under which the PBV new construction project was selected; or

(bb) Selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, then the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR §983.51(d).

(II) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project qualifies as the same site as long as a majority of the replacement units is built back on the site of the original development, and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

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

(aa) Former residents of the original project are provided with a selection preference that provides the residents with the right of first occupancy at the PBV new construction project; or

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

(IV) The HAP contract first became effective on or after April 18, 2017.

(2) Unit-size configuration, number of units. The unit-size configuration of a PBV new construction or rehabilitation project may differ from the unit-size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the percentage limitation exception be applied to units that exceed the total number of covered units in the original project. For example, a PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the program and project limitation exception would be 40 units. The remaining 10 PBV units would count against the program and the project limitation.

(3) Applicability of PBV project-selection requirements. For owner proposals involving excepted units for existing, rehabilitated, and newly constructed properties, the standard requirements for selecting projects and the units for PBV assistance — including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements — remain in effect. The only difference is that any PBV assistance provided to these properties does not count against the 20 percent program cap and may be used to project-base up to 100 percent of the units in the project. The provisions of Notice PIH 2013–27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remain in effect. This means that, in the event of a Housing Conversion Action at a project, HCV assistance may be project-based at the project, but only if the requirements of Notice PIH 2013–

27 are met. Units at the project for which a family has voluntarily relinquished enhanced voucher assistance for PBV assistance do not count against a PHA's program cap, nor the income-mixing requirement.

These exceptions may be applied only to projects that were not already under HAP contract as of April 18, 2017 (the effective date of the January 18, 2017, implementation notice). The exception may not be applied retroactively to projects under HAP contracts that commenced before April 18, 2017, or subsequently applied at the extension of those HAP contracts.

(4) Other units not subject to the percentage limitation or income-mixing requirement.

(a) RAD. HUD has waived the statutory and regulatory provisions regarding the 20 percent percentage limitation for RAD PBV units. Under HOTMA, neither are such units subject to the income-mixing requirement, as long as they meet the conditions in section (1) of this attachment. This means that a PHA that is administering RAD PBV assistance does not take the voucher units attributable to the RAD PBV contracts into consideration when calculating the 20 percent limitation. In other words, the units committed to RAD PBV are excluded from both the numerator and the denominator when calculating the number of voucher units that may be project-based. This exception applies regardless of the effective date of the HAP contract.

(b) HUD-VASH. HUD has awarded vouchers specifically designated for project-based assistance out of the HUD-VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these PBV HUD-VASH set-aside voucher allocations were made specifically for PBV assistance, HUD has determined that the PBV units supported by those vouchers will not count against the PHA's PBV program cap, for as long as the vouchers remain under PBV HAP contract at the designated project.. This means that a PHA will exclude these PBV HUD-VASH units from both the numerator and the denominator when calculating the number of authorized ACC units that are available for project-basing.

All other HUD-VASH vouchers, including non–set aside HUD-VASH vouchers that a PHA chooses to project-base, are subject to the percentage limitation.

Calculations. See Appendix I for instructions on how to calculate the number of voucher units that may be project-based when certain units no longer count toward the percentage limitation.

(5) Reporting requirement. If a PHA wishes to add PBV units under the program cap exceptions described above, then the PHA must provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. This information must be submitted by email to pbvsubmission@hud.gov.

A PHA is not required to report future RAD projects for which it will be attaching

PBV assistance, or future HUD-VASH awarded vouchers specifically designated by HUD for project-based assistance. Unlike the program cap, there is no requirement to submit PBV project cap information to HUD.

Attachment G: PBV HAP Contract: Initial Term and Extensions

Regulation: 24 CFR §983.205

HOTMA Reference: Sec. 106(a)(4) & (5), which amend Secs. 8(o)(13)(F) & (G) of the Act

Applicable Program: PBV

Summary of Change: HOTMA amends Sec. 8(o)(13)(F) of the Act to provide that the initial term of a Housing Assistance Payments (HAP) contract may be up to 20 years (increased from 15 years) and Sec. 8(o)(13)(G) to provide that a contract may be extended for an additional 20 years (again, increased from 15 years).

Content: This section overrides 24 §CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirement on the timing of extensions following the initial extension of the contract term. (The timing of when extensions of the term may be approved is described in detail below.)

(1) Initial term. As of April 18, 2017, a PHA may enter into a new PBV HAP contract with an owner with an initial term of up to 20 years. As was the case previously, the length of the initial term of the HAP contract may not be less than one year.

(2) Maximizing the initial term. For any PBV HAP contract that is still within the initial term, the PHA and the owner may mutually agree to extend the contract for up to the maximum initial term of 20 years.

For example, if the HAP contract has an initial term of 15 years with an effective date of January 1, 2015, the initial term of the contract ends on December 31, 2029. At any time before the end of the initial term, the PHA and owner may mutually agree to extend the initial term for an additional 5 years to reach the 20 year maximum initial term. For instance, in this example the PHA and owner may extend the initial term to December 31, 2034, provided they do so no later than December 31, 2029.

However, if the HAP contract is no longer in the initial term, the PHA and owner *cannot* extend the initial term, although they may enter into an extension beyond the initial term (see below).

Assume the PHA and owner entered into a HAP contract with a 10 year initial contract term on January 1, 2000. The initial term ended on December 31, 2009. During the initial term, the PHA and owner extended the contract term for 10 additional years. As a result, the HAP contract remains in effect until December 31, 2019. In this case, the PHA and owner are not able to extend the initial term of this HAP contract to 20 years because the contract already is beyond the initial term. (However, the PHA and owner may mutually agree to further extend the current 10 year extension as discussed below.)

(3) Extension of the term. The PHA may extend the term of the contract for up to 20 years at any time during the initial HAP contract term, provided the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.

The PHA may extend the term multiple times at any time during the term of the

contract, provided that extension beyond the initial term does not exceed 20 years, cumulatively. (See examples below.)

(4) Subsequent extensions beyond 20 years. A PHA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

(a) The PHA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;

(b) This determination must be made no earlier than 24 months prior to the expiration of the HAP contract.

(c) The term of the new extension may not exceed 20 years.

Regardless of the length of the extension, all such extensions must meet these same conditions.

(5) PHA owned units. In the case of PHA-owned units, any changes to the term of an initial HAP contract or any contract extension must be agreed upon by the PHA and the independent entity, in accordance with 24 CFR §983.59.

(6) Initial Term and Extension Examples. The following examples are intended to illustrate a number of common scenarios regarding HAP contract initial terms and extensions.

Scenario 1

The PHA and owner wish to enter into a new PBV HAP contract effective January 1, 2018, for the maximum time period that is permitted under the PBV program. The maximum contract term that the PHA may commit is 40 years.

Contract	Term	Start Date	End Date	Notes
Initial Term	20 yrs	1/1/18	12/31/37	Maximum 20 year term.
Extension	20 yrs	1/1/38	12/31/57	PHA may extend at any time before 12/31/37.
Total Term	40 yrs	1/1/18	12/31/57	Any further extension may not be determined prior to 12/31/55 (24 months prior to expiration date of the 20-year extension.)

Scenario 2

HAP contract is currently in effect with the following term:

Current Term	Term	Start Date	End Date	Comments
Initial Term	15 yrs	1/1/16	12/31/30	PHA and owner entered into a 15 year initial term, which was the maximum initial term at the time.
Extension	15 yrs	1/1/31	12/31/45	PHA and owner have previously agreed to 15 year extension.
Total Term	30 yrs	1/1/16	12/31/45	Contract is at pre-HOTMA maximum term of 30 years.

Following the implementation of the HOTMA provision, for example in July 2017, the PHA and owner mutually agreed to extend this contract's initial term and the extension to the maximum term that is permitted under HOTMA.

Revised Term	Term	Start Date	End Date	Comments
Initial Term	20 yrs	1/1/16	12/31/35	Because the HAP contract is still in the initial term, the initial term may be adjusted. It is now the maximum 20 years.
Extension	20 yrs	1/1/36	12/31/55	PHA and owner also revised the length of the existing extension to the 20 year maximum.
Total Term	40 yrs	1/1/16	12/31/55	Contract is at post-HOTMA maximum term of 40 years. PHA may consider further extension but not until 12/31/53.

Scenario 3

The HAP contract has the following terms.

Current Term	Term	Start Date	End Date	Comments
Initial Term	10 yrs	1/1/05	12/31/14	Initial term is over.
Extension	15 yrs	1/1/15	12/31/29	PHA and owner have previously agreed to 15 year extension.
Total Term	25 yrs	1/1/05	12/31/29	Contract is currently for 25 years.

Following the implementation of the HOTMA provision, the PHA decides it wants to extend the contract so that the term is 40 years. However, the PHA cannot extend the initial term since it has already been completed. The PHA is also limited to extending

the contract beyond the initial term to no more than 20 years at the present time. The maximum term the PHA could provide at this time is 30 years, with the understanding that the PHA will consider further extending the contract when the contract is within 24 months of the revised expiration date.

Revised Term	Term	Start Date	End Date	Comments
Initial Term	10 yrs	1/1/05	12/31/14	No change – the initial term is already over and may not be extended.
Extension	20 yrs	1/1/15	12/31/34	After April 18, 2017, the PHA and owner have now increased the extension from 15 years to the maximum of 20 years beyond the end of the initial term.
Total Term	30 yrs	1/1/05	12/31/34	Contract has maximum term of 30 years.
Future Extension	May not exceed 20 years	1/1/35	TBD	PHA may consider further extension no earlier than 12/31/32 (24 month requirement).

Scenario 4

The PHA enters into a new HAP contract effective 1/1/18 for the maximum 20 year initial term. The PHA wishes to extend the contract but for no more than 10 years at a time.

Contract Term	Term	Start Date	End Date	Comments
Initial Term	20 yrs	1/1/18	12/31/37	
Potential Extension #1	10 yrs	1/1/38	12/31/47	PHA may approve this first extension anytime before the initial term expires on 12/31/37.
Potential Extension #2	10 yrs	1/1/48	12/31/57	PHA may approve this second extension anytime before the first extension expires on 12/31/47.
Potential Extension #3	10 yrs	1/1/58	12/31/67	PHA may not make the determination to approve this extension earlier than 12/31/55 (24 months prior to the expiration of the previous extension), because any further extension will exceed the 20-year limit from the end of initial term.

Contract Term	Term	Start Date	End Date	Comments
Potential Extension #4	10 yrs	1/1/68	12/31/77	PHA may not make the determination to approve this future extension earlier than 12/31/65 (24 months prior to the expiration of the previous extension), because the contract is now more than 20 years beyond the end of the initial term.

Once the extension beyond the initial term has reached 20 years, cumulatively, the PHA may not further extend the contract without first determining such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities, and the PHA may not make that determination more than 24 months prior to the expiration of the previous extension. In this example, the PHA must fulfill that requirement starting with the 3rd potential extension, since the combination of the first and second extensions (each for 10 years) have reached the 20 year maximum.

Attachment H: Priority of PBV HAP Contracts

Regulation: 24 CFR §983

HOTMA Reference: Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(i)(I) of the Act

Applicable Program: PBV

Summary of Change: HOTMA establishes a new Sec. 8(o)(13)(F)(i)(I), which requires that, in the event appropriated funds are insufficient to fund all vouchers administered by a PHA, the PHA must implement cost-savings measures before terminating any PBV HAP contract.

Content: Cost-saving measures that must be taken prior to terminating assistance contracts are found in Notice PIH 2011–28 ("Cost-Saving Measures in the Housing Choice Voucher (HCV) Program") or subsequent notices. If a PHA implements all of these cost-saving measures and still has insufficient funds to cover its housing assistance payments, then the PHA may choose to terminate payments under its HCV or PBV programs.

A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance.

A PHA may determine which type of assistance (HCV or PBV) to terminate first and must identify in its Administrative Plan the factors it considered in making this determination.

Attachment I: PBV Biennial Inspections

Regulation: 24 CFR §983.103

HOTMA Reference: Sec. 106(a)(4), which amends Sec. 8(o)(13)(F) of the Act

Applicable Program: PBV

Summary of Change: HOTMA modifies the statutory language regarding the inspection of PBV-assisted units to clarify that biennial inspections of PBV-assisted properties may be conducted using a sample of units. There is no change to the regulatory requirements at 24 CFR §983.103.

Content: The HOTMA change merely clarifies that the use of sampling is authorized for PBV-assisted units; it does not affect the guidance in Notice PIH 2016–05 ("Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies"), which remains in effect. Additionally, HOTMA does not change 24 CFR §983.103(d), governing biennial inspections. Attachment K to Notice PIH 2016–05 provides guidance to PHAs that wish to adopt alternative inspection methods.

Attachment J: Adding Units to PBV HAP Contract Without Competition

Regulation: 24 CFR §983.207(b)

HOTMA Reference: Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(ii) of the Act

Applicable Program: PBV

Summary of Change: Prior to HOTMA, the regulation at §983.207(b) stipulated that a HAP contract could be amended to add units only during the 3-year period following the HAP execution date, and that, within this timeframe, a new PBV Request for Proposals would not be required. HOTMA overrides the regulation, stating that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures.

Content: As of April 18, 2017, any existing PBV HAP contract, including a contract entered into prior to April 18, 2017, may be amended to add units by mutual agreement of the PHA and owner without competitive selection. The amendment is subject to all PBV requirements, including those requirements described below.

(1) Percentage limitation. The amendment must comply with Sec. 8(o)(13)(B) and 24 CFR §983.6, which require that a PHA may project-base not more than 20 percent of its authorized units, with some types of units excepted from this program cap. HOTMA changed how this percentage limitation is to be calculated. See Attachment C and Appendix I of this notice for instructions on how to make the calculation and report the results to HUD, both of which must be done prior to amending a contract to add units.

(2) Income-mixing requirement (project cap). The amendment must comply with Sec. 8(o)(13)(D) and 24 CFR §983.56, which limit the number or percentage of units in any one project to which PBV assistance may be attached, with exceptions for certain types of units. HOTMA made changes to the income-mixing requirement. See Attachment E of this notice for further information on the PBV income-mixing requirement. Any units added on or after April 18, 2017, must fall under one of the HOTMA exception categories in order for the unit to be excepted from the income-mixing requirement.

(3) Rent reasonableness. The rents for the units added to the contract via amendment must comply with Sec. 8(o)(10)(A) and §983.303, which require that rents be reasonable. If the units newly added to the contract have rents that do not exceed the rents charged for units under the original contract or for comparable unassisted units in the project, then the rents for the newly added units will be considered to be reasonable.

(4) Administrative Plan. Whether to add units to a contract is an option that is available at the discretion of a PHA. A PHA that intends to add PBV units in this manner must state in its Administrative Plan that it will do so and must provide its rationale for adding PBV units to specific projects.

(5) Amendment of RAD PBV HAP contract. A PHA may not amend a RAD PBV HAP contract to add units above the number included in the initial contract.

A PHA may amend its PBV HAP contract to add units without competitive selection during the term of an initial HAP contract or during the term of any extension of that contract. The

amendment may also occur at the point of initial contract extension or at the point of any subsequent extension, so that the contract extension will have a greater number of units than the previous contract. However, 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 in place under the HAP contract.

24 CFR §983.58(c) does not apply when PBV units are added to a current PBV HAP contract. In other words, an environmental review is not required, and there is therefore no need for any sort of determination by a responsible entity.

Attachment K: PBV Contract Termination or Expiration without Extension

Regulation: 24 CFR §983

HOTMA Reference: Sec. 106(a)(4), which provides for a new Sec. 8(o)(13)(F)(iv) of the Act

Applicable Program: PBV

Summary of Change: With respect to a PBV HAP contract, HOTMA requires the contract to specify that, upon termination or expiration of the contract without extension, an assisted family may elect to remain in its unit and use the assistance previously provided under the contract, as long as the unit meets HUD's housing quality standards and the rent for the unit is reasonable. In such a circumstance, the family may choose to move or to remain in the unit. If the family remains, it will pay its required share of the rent in addition to the amount, if any, by which the gross rent exceeds the applicable payment standard. HOTMA also authorizes HUD to establish additional contract conditions.

Content: This provision applies to all PBV HAP contracts in effect as of April 18, 2017, and all contracts entered into on or after April 18, 2017. HOTMA establishes for PBV-assisted families a right to remain in the project at the end of the PBV HAP contract with tenant-based assistance for as long as the project is used for rental housing and the unit is otherwise eligible for HCV assistance.

(1) Owner notification. For any contract entered into prior to April 18, 2017, that remains in effect on that date, a PHA must notify the owner in writing that this provision is in effect. The notice must contain the following language:

> "Pursuant to Section 106(a)(4) of the Housing Opportunity Through Modernization Act of 2016 and Paragraph 26.b. of Part 2 of the PBV HAP Contract for Existing Housing or Paragraph 27.b. of Part 2 of the PBV HAP Contract for New Construction or Rehabilitation, such contract is amended to provide that, upon termination or expiration of the contract without extension, each family assisted under the contract may elect to use its assistance to remain in the same project if the family's unit complies with the inspection requirements under section 8(o)(8) (42 U.S.C. 1437f(o)(8)) of the U.S. Housing Act of 1937 ("the 1937 Act"), the rent for the unit is reasonable as required by section 8(o)(10)(A) of the 1937 Act, and the family pays its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard."

Any contract entered into on or after April 18, 2017, must include this language.

(2) Statutory notice. Per the statutory notice requirements at Sec. 8(c)(8) and 24 CFR §983.206, not less than 1 year prior to the termination or expiration without extension of a HAP contract, an owner must provide notice to both the PHA and affected tenants. An owner who fails to provide such notice must permit tenants to remain in their units for the required notice period with no increase in the tenant portion of the rent. During this time period, an owner may not evict a tenant as a result of the owner's inability to collect an increased tenant portion of rent. With PHA agreement, an owner may renew the terminating contract for a period of time sufficient to give tenants 1 year's advance notice. For families who wish to remain at the property, the

HCV assistance does not commence until the end of the owner's required notice period.

(3) Housing quality standards. In order for the family to remain at the project with tenant-based HCV assistance, the unit must meet the HQS requirements of the HCV tenant-based program, including initial inspection requirements. HOTMA made a number of changes related to the initial inspection requirements. (See Notice PIH 2017–20, issued October 27, 2017.)

(4) Effective date of HCV HAP and family leases. The transition from PBV HAP units to HCV HAP units will require the PHA and owner to plan to assure continued payments for families under lease and continued payments to the owner of units under HAP. The following requirements apply:

(1) A PHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the PBV contract termination or expiration date.

(2) A PHA may not commence the tenant-based HCV housing assistance payment to an owner until the HCV tenant-based HAP contract has been executed.

(3) The HCV HAP contract may not be executed before the PHA approves the assisted tenancy in accordance with 982.305. An HCV HAP contract for a family must be executed no later than 60 calendar days from the start of the family's lease. PHAs are encouraged to approve the assisted tenancy and execute the HCV HAP contract without need for the 60-day grace period. If this is not possible, then, as long as the HCV HAP contract is executed during the 60-day grace period, once it has been executed, the PHA may pay the owner retroactively to the start date of the family's lease term.

(4) If the HCV HAP contract has a different rent than did the PBV HAP contract, and the new rent is determined by the PHA to be reasonable, then the PHA will use the new gross rent to calculate the family's HCV HAP going forward. The family will be responsible for paying the new family rent to owner starting from the effective date of the HCV HAP contract.

(5) Inapplicability of HCV eligibility requirements. Per the current definition of "admission" in 24 CFR §983.3, a family that receives a tenant-based HCV pursuant to this newly enacted provision is not a new admission to the HCV program and is not subject to income-eligibility or any other admission requirement. The family does not count toward the PHA's income-targeting requirements at 24 CFR §982.201(b)(2)(i).

(6) Termination of tenancy by owner. An owner may not terminate the tenancy of a family that exercises its right to remain except for in response to serious or repeated lease violations, or other good cause.

(7) Family payment toward rent. A family that remains in its unit with continued tenant-based HCV assistance must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount by which the unit rent exceeds the applicable payment standard. The family's initial share of the rent may exceed 40 percent of the family's adjusted monthly income, irrespective of the normally

applicable restriction on the amount a family may pay when initially assisted in any unit at 24 CFR §982.305(a)(5).

(8) HCV program rules. All other HCV program rules apply to families who remain in the project.

With respect to additional contract conditions, HUD has chosen not to adopt any such conditions at this time.

Attachment L: Attaching PBVs to Certain PHA-Owned Projects Without Following a Competitive Process

Regulation: 24 CFR § 983.51(b)

HOTMA Reference: Sec. 106 (a)(9), which adds Sec. 8(o)(13)(N) to the Act

Applicable Program: PBV

Summary of Change: HOTMA adds section 8(o)(13)(N) to the Act, which allows a PHA to attach PBV assistance to units in a project in which the PHA has an ownership interest or over which the PHA has control without following a competitive process. In order to exercise this authority, the PHA must be engaged in an initiative to improve, develop, or replace a public housing property or site.

Content:

(1) PHA ownership interest. A project does not have to meet the definition of PHA-owned in order for the PHA to have an ownership interest in the project and to be covered by this HOTMA provision. An ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds *any direct or indirect interest* in the project in which the units are located, including, but not limited to, an interest as: titleholder; lessee; stockholder; member, or general or limited partner; or member of a limited liability corporation. For purposes of this authority, a PHA ownership interest also includes a scenario in which the PHA is the lessor of the ground lease for the land upon which the PBV project to improve, develop, or replace the public housing property is located or will be constructed. Units that meet the definition of "PHA-owned" as defined here qualify for this exception. Alternatively, just having an ownership interest for the purpose of this provision does not equate with meeting the definition of PHA-owned as defined in Attachment A.

(2) Conditions for non-competitive selection. In order to be subject to this non-competitive exception, the following conditions must be met:

(a) The PHA must be engaged in an initiative to improve, develop, or replace the public housing properties or sites. The public housing properties or sites may be in the public housing inventory or they may have been removed from the public housing inventory through any available legal removal tool (which may include but is not limited to disposition or demolition under Section 18 of the Act, voluntary conversion under Section 22 of the Act, or required conversion under Section 33 of the Act) within 5 years[2] of the date on which the PHA entered into the AHAP or HAP pursuant to the non-competitive selection.

(b) If the PHA plans rehabilitation or new construction, a minimum threshold of $25,000 in hard costs per-unit is required.

(c) If a PHA plans to replace public housing by attaching project-based assistance to existing housing in which the PHA has an ownership interest or over which the PHA has control, then the $25,000 per-unit minimum threshold does not

[2] The date on which the unit was removed from IMS/PIC serves as the start date for the 5-year window.

apply as long as the existing housing substantially complies with HUD's housing quality standards. The PHA's Administrative Plan must describe what it means to "substantially comply with HUD's housing quality standards."

(d) The PHA must explain in its Administrative Plan the work it plans to do on the property or site and how many units of PBV it plans to add. See Administrative Plan requirements in the Appendix II to this notice.

(3) Other PBV requirements. In order to be non-competitively selected under this provision, the units must be eligible for PBV assistance in accordance with 24 CFR §983.53, and the selection of the units must satisfy all other statutory and regulatory requirements of the PBV program. Unless otherwise exempt, units non-competitively selected under this section are subject to the program cap and income-mixing requirements and exceptions discussed in Attachment F.

Attachment M: Project-Basing Family Unification Program and HUD-VASH Vouchers

Regulation: 24 CFR §983

HOTMA Reference: Sec. 106(a)(9), which added a new Sec. §8(o)(13)(O) of the Act

Applicable Programs: HCV and PBV

Summary of Change: HOTMA allows PHAs to project-base Family Unification Program (FUP) and HUD-Veterans Affairs Supportive Housing (VASH) vouchers without requiring additional HUD approval. Prior to HOTMA, PHAs were prohibited from project-basing vouchers awarded for FUP. HUD-VASH vouchers could be project-based, but required HUD review and approval in accordance with Notice PIH 2015–10 (this applied to HUD-VASH vouchers the PHA chose to project-base and not to HUD-VASH units awarded under a HUD-VASH PBV allocation as described in Attachment F of this notice). This notice supersedes Notice PIH 2015–10 in its entirety.

PHAs conduct their HUD-VASH programs in conjunction with the Veterans Affairs Medical Center (VAMC). The VAMC must make supportive services available to individuals receiving HUD-VASH assistance. Thus, when a PHA chooses to project-base its HUD-VASH vouchers, it must ensure the VAMC will continue to make supportive services available to the HUD-VASH families.

Content: HOTMA authorizes PHAs to project-base FUP and HUD-VASH vouchers in accordance with the statutory and regulatory requirements of the PBV program.

(1) Considerations. HUD encourages PHAs wishing to project-base FUP or HUD-VASH vouchers to include in their considerations whether the activity:

- Will yield significant benefit to participants;
- Will impact the availability of tenant-based FUP or HUD-VASH vouchers;
- Will impact voucher utilization; and

In determining whether project-basing will yield significant benefit to FUP or HUD-VASH participants, HUD encourages PHAs to consider:

- The impact on choice and access to areas of higher opportunity.
- The success of FUP and HUD-VASH participants with tenant-based vouchers.
- How project-basing will improve FUP or HUD-VASH participants' access to supportive services.

In determining the impact of project-basing on the availability of tenant-based FUP or HUD-VASH vouchers, HUD encourages PHAs to consider:

- The extent of FUP or HUD-VASH vouchers to be project-based (percent of total FUP or HUD-VASH allocation).
- Unit size. FUP youth and HUD-VASH veterans typically require a smaller unit size, while FUP families typically require a larger unit size. Unit size determination will impact the availability of budget authority to issue vouchers (i.e., a large unit may cost more than a small unit).
- The 36-month time limit on youth FUP vouchers and whether youth will be less or

more likely to request a voucher to move.

Project-basing FUP vouchers may be a part of a PHA strategy to provide supportive housing to youth and families. PHAs may leverage the project-based units with community based services and supports. Following this model would also allow a PHA to project-base additional units as a result of the service provision. (See Attachment E.)

When a PHA chooses to project-base their HUD-VASH vouchers, they must ensure they have the support of the partnering VAMC. The PHA should maintain this documentation of support for their records.

(2) Coordinated entry and referrals. PHAs may work with their local Continuum of Care (CoC), in cooperation with their local Public Child Welfare Agency (PCWA), to prioritize entry into FUP PBV units to ensure that the units are targeted to people who most need supportive housing. For HUD-VASH, VA partners would ensure that the units are targeted to people who most need supportive housing.

For FUP, PCWAs and PHAs may accept referrals from CoCs for eligible youth in support of a community's effort to prioritize assistance in FUP PBV units. Referrals from CoCs must be signed off on by the PCWA. For HUD-VASH, all referrals come from the partnering VAMC.

(3) Limiting FUP vouchers to one category of FUP eligible families. A PHA that chooses to project-base FUP vouchers may limit the project-based vouchers to one category of FUP eligible participants (families or youth) or a combination of the two. FUP vouchers that are limited to youth cannot exclude eligible youth with children consistent with the nondiscrimination requirements under the Fair Housing Act. For example, a PHA may project-base vouchers at a service-rich site for youth. PHAs generally do not similarly limit HUD-VASH project-based vouchers to a category of eligible participants, unless the units are specifically for elderly HUD-VASH families.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Appendices

Appendix I. PBV Program Cap Calculation Instructions

This appendix provides step-by-step instructions that complement a sample *PBV Program Cap Calculation Worksheet* that may be found here: PBV Program Cap Calculation Worksheet. The instructions and sample worksheet follow the same organizational structure. As applicable, the instructions reference corresponding step and line numbers of the worksheet.

Use of the worksheet is optional. PHAs may use another form to calculate and submit the program cap information to HUD.

Summary Table

PHAs are advised to complete Steps 1 through 5 of the worksheet first and then review the "Summary Table." This table contains embedded formulas that automatically calculate, among other things, the 20 percent program cap and the 10 percent program cap exception category, based on the information entered by the PHA in Steps 1 through 5. PHAs will be unable to enter information in the Summary Table.

Based on the number of units a PHA has already project-based, the number it proposes to project-base, the number of such units that are part of the exception category, and the number that are excluded entirely from the program cap, the Summary Table will show whether the PHA's proposal will push it above the applicable program cap(s).

In cases where a PHA's submission will place the PHA above a program cap, the Summary Table will display in red the percent available under the respective cap. For example, if a PHA proposes to project-base 11 percent of its available ACC units under the 10 percent exception category, then the 10 percent program cap field in the summary table will be highlighted in red. The PHA must then either reduce the number of exception units it proposes to project-base or, if the 20 percent cap has not been met, it may move units to the 20 percent program cap category. Likewise, if the PHA's proposal will cause it exceed the 20 percent cap, then it may move units to the 10 percent exception category, but only if the units are eligible and there is room within the 10 percent category for additional units.

General Instructions for Completing Steps 1 through 5

In the column titled "HUD Approved," enter the total number of units currently under a PBV HAP contract, under an Agreement to Enter into a HAP contract (AHAP), and/or covered by a notice of proposal selection.

In the column titled "Proposed," enter the number of units proposed for project-basing.

In Steps 2 through 5, enter a zero in each category that is not applicable to your agency.

A unit that qualifies under more than one exception category must be recorded in only one such category.

PHA Information – (lines 2-6):

Instruction: Enter the PHA number in line 2 and the PHA name in line 3.

Enter the name of the person most familiar with the information on the worksheet in line 4 and that person's email in line 5.

Enter the date the *PBV Program Cap Calculation Worksheet* is being completed in line 6.

Step 1: Number of ACC Authorized Units (Baseline) – (line 17)

Instruction: In line 17, record the number of authorized units (as described in Attachment C of this notice). This number may be found in the Inventory Management System/PIH Information Center (IMS/PIC).

As Steps 2 and 3 are completed, the number in line 17 may be reduced. This is because Steps 2 and 3 involve tabulating units that are exempt from the program cap.

Step 2: PBV Units that Previously Received Long-Term HUD Housing Subsidies, or were Subject to a Rent Restriction as a Result of Certain HUD Loan Insurance Programs (For PBV HAP Contracts that First Became Effective on or After April 18, 2017) – (lines 20-28)

Instruction: Record units that were previously subject to certain federal rent restrictions or that received another type of long-term housing subsidy provided by HUD that do not count toward the program cap when PBV assistance is attached (as described in Attachment F of this notice). Lines 20-28 of the *PBV Program Cap Calculation Worksheet* lists the categories applicable under this step. Units entered in any of the categories under this step must fully comply with the conditions described in Attachment F of this notice.

Line 29 automatically calculates the total based on the information entered in lines 20-28. PHAs will be unable to enter information in line 29.

Step 3: Other PBV units excluded from program cap calculation – (lines 32-35)

Instruction: Record other units excluded from the program cap (as described in Attachment F of this notice). There are two categories under this step: RAD units (components 1 and 2) and HUD-VASH units awarded under a HUD-VASH PBV set-aside allocation as described in Attachment F of this notice. These categories are listed in lines 32 through 34.

Line 35 automatically calculates the total based on the information entered in lines 32-34. PHAs will be unable to enter information in line 35.

Step 4: PBV Units Categorized Under 10% Increase for Eligible Units (For PBV HAP Contracts First Executed On or After April 18, 2017) – (lines 38-41)

Instruction: Record units that qualify under the 10 percent program cap exception (as described in Attachment D of this notice). Lines 38-41 of the *PBV Program Cap Calculation Worksheet* list the categories applicable under this step.

Any PBV units awarded under a HUD-VASH PBV set-aside allocation will not qualify under this step. They must instead be entered under Step 3, above. Any HUD-VASH vouchers the PHA chooses to project-base as described in Attachment M of this notice may be recorded here if they qualify for the 10 percent exception category described in Attachment D of this notice.

Line 42 automatically calculates the total based on the information entered in lines 38-41. PHAs will be unable to enter information in line 42.

Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for this 10 percent exception authority.

<u>Step 5:</u> Total PBVs not Meeting an Exception (not contained in steps 2-4 above) – (lines 45-46)

Instruction: In line 45, record the number of HUD-approved units that do not meet the criteria for being included under Steps 2, 3, or 4, above. In line 46, record such units that the PHA proposes to project-base.

Appendix II. PHA Plan, Administrative Plan, and Other PBV Topics

This appendix addresses PHA Plan requirements, Administrative Plan requirements, and other PBV topics. It contains provisions of Notice PIH 2011–54 that are unchanged by HOTMA, provisions that are added or changed by HOTMA, and additional guidance on the PBV program that HUD is implementing via this appendix.

PHA Plan Requirements

In accordance with Section 7.0 of the PHA Plan Template (see Notice PIH 2015–18 (*Availability of New and Revised Public Housing Agency (PHA) Five-Year and Annual Plan Templates and Other Forms)*) and the requirements of HOTMA, if a PHA intends to use the PBV program, it must provide the projected number of PBV units, their general locations, the work it plans to do on the property or site, how many units of PBV it is planning on adding to the site, and how project-basing is consistent with its PHA Plan. Any amendment to the PHA Plan regarding PBVs must be in accordance with 24 CFR 903.7(r)(2)(ii), which requires the PHA to identify the basic criteria for determining a significant amendment or modification to its 5-year or annual PHA Plan. When amending a PHA Plan, the agency must follow 24 CFR 903.21 which, in part, provides for adoption by the board of directors or similar governing body and public notice and comment.

Administrative Plan Requirements

Listed below are those policies and procedures that must be addressed in the PHA's Administrative Plan.

(1) Unchanged by HOTMA:

(a) The procedures for owner submission of PBV proposals and for selection of those proposals, such as method of providing public notice, deadline for submission and selection factors. See 24 CFR 983.51(a), (b) and (c). If the PHA intends to use both competitive and non-competitive procedures, it must describe under what conditions it will use each method of selection. It is acceptable for a PHA to state that it will only use competitive selection procedures when non-competitive selection is not applicable. However, if the PHA intends to use both competitive and non-competitive selection of proposals, the procedures above must be described in the Administrative Plan.

(b) The standard for deconcentrating poverty and expanding housing and economic opportunities must be described in the Administrative Plan in accordance with 24 CFR 983.57(b)(1). In addition, the PHA must establish its policy for selection of PBV sites and describe how the site selection policy promotes PBV goals.

(c) Applicants for PBV units must be selected from the PHA's waiting list. The PHA's Administrative Plan must describe how applicants will be selected. There are various options for a PHA in establishing PBV waiting lists. It may use separate lists for tenant-based assistance and PBV assistance or it can use one list for both. The PHA may establish separate waiting lists for different PBV projects or buildings (or for sets of such units). Different preferences may be established for each PBV waiting list. PHAs may take referrals from PBV

owners. However, all new applicants and families currently on the PHA's tenant-based waiting list must be provided with the option to have their names placed on all/any open waiting lists that the PHA maintains for assisted housing. See 24 CFR 983.251. PHAs do not have to notify each family on the tenant-based waiting list by individual notice. A PHA could notify these applicants by the same means it would use in opening its waiting list under 24 CFR §982.206(a). A non-exclusive or exhaustive list of suggestions are: (1) advertising through local and minority newspapers and the internet; (2) local postings at post offices, libraries, and community centers; and (3) an outreach to social service organizations that may serve the same clientele that will be occupying the PBV units.

(d) Any tenant screening done by the PHA must be stated in the Administrative Plan. See 24 CFR 983.255(a).

(e) The PHA must have a policy in its Administrative Plan regarding family occupancy of wrong-size or accessible units. In cases where, after initial tenancy, the family is occupying a wrong-sized unit or a unit that has accessibility features not required by the family, it must describe the form(s) of continued assistance it will offer the family. See 24 CFR 983.260(b).

(f) At the PHA's discretion, the PBV HAP contract may provide for vacancy payments to the owner. Therefore, the PHA must decide if it will pay such vacancy payments as defined under 24 CFR 983.352. The maximum vacancy payment can be no more than two full months of monthly rent to owner under the assisted lease after the month the family moves out minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Vacancy payments can only cover the portion of time the unit remains vacant during the period defined.

(2) Added or Changed by HOTMA:

(a) If a PHA plans to exceed the cap on the number of units in a project that may have PBV attached for non-elderly families (i.e., the greater of 25 dwelling units or 25 percent of the dwelling units in any project), the Administrative Plan must describe the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA may not require participation as a condition of living in an excepted unit for HAP contracts executed on or after April 18, 2017. although such services may be offered. See Attachment E of this notice for more information.

(b) A PHA must detail its intent to add PBV units without competition to an existing HAP contract along with its rationale for adding PBVs to the specific project.

(c) If A PHA has insufficient funds to cover its housing assistance payments, then the PHA must take cost-saving measures prior to terminating assistance

contracts. The list of cost-saving measures is found in Notice PIH 2011–28 ("Cost-Saving Measures in the Housing Choice Voucher (HCV) Program") or subsequent notices. If a PHA implements all of these cost-saving measures and still has insufficient funds to cover its housing assistance payments, then the PHA may choose to terminate payments under its HCV or PBV programs. A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance. A PHA may decide which type of assistance (HCV or PBV) to terminate first and must therefore identify in its Administrative Plan the factors it will take into consideration when deciding which type of assistance to terminate first. A PHA may identify in its Administrative Plan any additional cost-saving measures that it will implement prior to terminating HCV or PBV assistance and must identify in its Administrative Plan the factors it will take into consideration when deciding which type of assistance to terminate first.

(d) A PHA that will, without following a competitive process, attach PBVs to a public housing project in which it has an ownership interest or over which it has control, must detail the work it plans to do on the public housing property or site that it is improving, developing, or replacing and must state how many units it plans to project-base at the property or site. If the PHA plans to replace public housing by attaching PBVs to existing housing in which the PHA has an ownership interest or over which the PHA has control, then the existing housing must substantially comply with HUD's housing quality standards, and the PHA must describe in its Administrative Plan what it means to "substantially comply with HUD's housing quality standards."

(e) A PHA making PBV units (not HUD-VASH) specifically available to house families that are comprised of or include a veteran under the exception category described in Attachment D of this notice must define "veteran."

Additional administrative policies regarding HQS will be addressed in another notice.

(3) Additional PBV Guidance Implemented via this Appendix:

(a) A PHA may adopt a policy in its FSS Action Plan that allows families that have left the FSS program without completing the FSS contract to re-enroll in the FSS program. If the PHA would like to adopt such a policy for non-FSS families that have failed to complete their supportive services requirements, then that policy must be included in the PHA's Administrative Plan.

(b) The PHA's Administrative Plan must define the term "project." See paragraph (7) of this Appendix II for more information.

(c) The Administrative Plan must address the effective dates of the Small Area FMR designation, if applicable, and how this will apply to PBV units in accordance with 24 CFR 888.113(h).

Other PBV Topics

(1) Agreement to Enter into a Housing Assistance Payments (AHAP) Contract.[3] For any projects involving new construction or rehabilitation, an AHAP must be executed prior to the start of any construction or rehabilitation. An AHAP is not required for existing units. The requirements regarding an AHAP are detailed in 24 CFR §983.152. A PHA may not execute an AHAP until a subsidy layering review and an environmental review are completed.

(2) Subsidy Layering Review (SLR). The purpose of an SLR is to avoid excess subsidy. See 24 CFR §983.55 and 79 Fed. Reg. 57955 (Sept. 26, 2014). SLRs are required only for projects involving new construction and rehabilitation. The *Federal Register* notice, *Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development*, issued on September 26, 2014, provides that qualified housing credit agencies (HCA) must follow certain administrative guidelines in performing subsidy layering reviews in accordance with the requirements of the Housing and Economic Recovery Act (HERA) of 2008 in those cases where the HCA elects to conduct such reviews for mixed-finance public housing projects and for newly constructed and rehabilitated structures combining other forms of government assistance with project-based voucher assistance.

(3) Environmental Review. In accordance with 24 CFR 983.58, an environmental review is required for all PBV units including existing units. A PHA, an owner, or 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 until an environmental review is completed. Specifically, no AHAP for rehabilitated or new construction units may be executed until the environmental review is complete and no housing assistance payments (HAP) contract may be executed for existing units until the environmental review is completed.

(4) Physical Accessibility. PBV projects must meet program accessibility requirements of 24 CFR 983.102. A PHA must ensure compliance with the accessibility requirements of Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (ADA), as well as the design and construction requirements of the Fair Housing Act, as applicable. 24 CFR part 8 (Section 504); 24 CFR part 100 (Fair Housing Act); 28 CFR part 35 (Title II of the ADA).

(5) Equal Opportunity and Civil Rights Requirements. A PBV program must comply with all applicable equal opportunity and nondiscrimination requirements as required by 24 CFR 983.8. The PHA must certify that it will carry out its 5-Year and Annual Plan in conformity with all applicable fair housing and civil rights laws and that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in its Assessment of Fair Housing (AFH) conducted in accordance with the requirements of 24 CFR §5.150 through §5.180, that it will take

[3] This provision has been changed by HOTMA, but HUD has not yet implemented the change. The information in this section still applies until further notice.

no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs. 24 CFR 903.7(o). Under HUD's AFFH regulation, PHAs receiving assistance under Section 8 or Section 9 of the 1937 U.S. Housing Act are required to conduct and submit an AFH. 24 CFR §§5.150 et eq. See also 82 Fed. Reg. 4373 (Jan. 13, 2017).

(6) Special Housing Types. Special housing types that are eligible to be assisted under the PBV program (i.e., single room occupancy units, congregate housing, group homes, and cooperative housing) are subject to the same inspection requirements and exceptions as any other PBV units. Of the special housing types, shared housing, manufactured home space rental, and the homeownership option are ineligible to be assisted under the PBV program. PHAs must consider requests for reasonable accommodations that may be necessary for a qualified individual with disabilities to benefit from the program (in accordance with the Fair Housing Act, Section 504 of the Rehabilitation Act, title II of the Americans with Disabilities Act and implementing regulations at 24 CFR 100.204, 24 CFR 8.33, and 28 CFR 35.130). For example, approval of a live-in aide may be necessary as a reasonable accommodation. Reasonable accommodations are determined on a case-by-case basis.

(7) Definition of Project. The PBV statute defines project as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. This definition was unchanged by HOTMA. PHAs have discretion to define a project within the parameters of the statutory definition. That is, a PHA may define a project as a single building, or as multiple contiguous buildings, or as multiple buildings on contiguous parcels of land.

PBV HAP contracts are executed for projects based on how the PHA has defined the term in its Administrative Plan. For example, if the PHA defines "project" as a single building, then one HAP contract is executed for each building being project-based.

Appendix III. Reporting

The content of this appendix comes from Section I of Notice PIH 2015–05. It is unchanged (with the exception of VMS reporting) and is simply included here in order to consolidate PBV guidance. Sections II and III of Notice PIH 2015–05 were changed by HOTMA and are therefore revised in the respective applicable attachments of this notice.)

Timely Reporting Requirements of the Family Report (form HUD-50058 and form HUD-50058 MTW) into the Inventory Management System/Public and Indian Housing Information Center (IMS/PIC) and Timely Submissions into the Voucher Management System (VMS) for Project-Based Vouchers.

(1) Reporting PBV in IMS/PIC. To ensure that families occupying PBV units are recorded properly in IMS/PIC, PHAs must complete section 11 (Section 8: Project Based Certificates and Vouchers), lines 11b through 11an, as applicable, of the form HUD-50058. The remaining sections of the form HUD-50058 must be completed the same as for regular Housing Choice Voucher (HCV) participants with the following exceptions:

(a) Action Codes 10, Issuance of a Voucher and 11, Expiration of Voucher. Action codes 10 and 11 do not apply to the PBV program. PHAs do not need to enter action code 10 or 11 on the form HUD-50058 for participants that will occupy PBV units.

(b) Payment Standards. Payment standards do not apply to the PBV program.

(c) Portability. Since portability does not apply to the PBV program, action codes 4 (portability move-in) and 5 (portability move-out) must not be used on line 2a. Also, lines 11d through 11f must be left blank.

MTW PHAs administering PBV must complete section 21, MTW Tenant-Based or Project-Based Assistance, of the form HUD-50058 MTW. The remaining sections of the form HUD-50058 MTW must be completed as normal *except* for 21m, Flat Subsidy Amount, which does not apply to the PBV program.

(2) Correcting the Form HUD-50058 Report when Section 12 was Incorrectly Used. In cases where a PHA has reported a PBV participant in section 12, *Housing Choice Vouchers: Tenant Based Vouchers*, of the form HUD-50058 in error, the PHA must correct the record by entering the family data in section 11 no later than the family's next recertification. Section 11 must be used for families participating in the PBV program since, under the PBV program, families never pay more than TTP (as reflected in section 11 of the 50058).

PHAs that correct an error must determine if the participant has been paying an incorrect rent amount. If so, the PHA must correct the errors starting from the time the incorrect reporting began and reimburse any amounts owed to the family.

(3) Reporting Voucher Issuance. A family participating in the PBV program is eligible for tenant-based voucher assistance under the HCV program after the family's first year in occupancy in the PBV unit, if and when such assistance (or other comparable assistance) becomes available. When the PHA issues a family receiving PBV assistance a HCV, it must enter action code 10 on the form HUD-50058. The PHA

continues to record the participant as VO on line 1c of the form HUD-50058 and does not enter an End of Participation (EOP) entry for the participant. If the PHA cannot enter a portability move out (action code 5) on the form HUD-50058 (line 2a) for a PBV family that wants to port, the PHA should contact its PIC coach. HUD is aware that this is an issue with PBV family reports and will work with PHAs to resolve this issue until the PIC system can be modified to accept this action code for PBV families who want to port.

(4) Timely IMS/PIC Reporting. Through Notice PIH 2011–65, HUD established the requirement of timely submission of form HUD-50058 and form HUD-50058 MTW. The Department requires that form HUD-50058 must be submitted no later than 60 calendar days from the effective date of any action recorded on line 2b.

(5) Timely VMS Submissions. Notice PIH 2012–21 is applicable to all PHAs administering the voucher program and establishes submission requirements for the VMS. The Department uses VMS data for budget formulation, cash management, monitoring, determining renewal funding levels, and funding-related factors under the Section Eight Management Assessment Program (SEMAP). Therefore, it is imperative that PHAs comply with VMS reporting requirements and timelines, ensuring that the information submitted is both timely and accurate. The data submitted in the VMS is subject to verification and review by the PIH Office of Housing Voucher Programs Quality Assurance Division. PHAs are required to submit leasing and cost data in the VMS on a monthly basis; each month's data is submitted during the subsequent month. The VMS is available for regular submissions from the 4th through the 22nd of each month. Adjustments to previous months' reported VMS data may be entered at any time by utilizing the Prior Month Correction (PMC) module. Additional information such as how to use the system, prior month corrections, viewing data and generating reports is found in the VMS User's Manual.[4]

VMS data reporting is time sensitive, and requests to extend submission deadlines will not be considered. However, PHAs that are not able to meet reporting deadlines due to circumstances beyond their control must notify the FMC at Financial_Management_Center@hud.gov. PHAs that do not submit the required data by the reporting deadline may be subject to a withholding or offset of administrative fees.

(a) Reporting the number of PBVs under an AHAP, but not under a HAP. In this field, the PHA reports the number of PBVs under an AHAP only. These units are not reported in any other field.

(b) Reporting the number of PBVs under a HAP and leased. In this field, the PHA reports the total number of PBVs that are under a HAP contract and leased. These units and associated expenses are also reported in the field that best describes the type of voucher being used (Tenant Protection, All Other Vouchers (AOV), etc.)

[4] Click here to be taken to the online version of the VMS *User's Manual*.

(c) Reporting the number of PBVs under a HAP contract that are not leased and not receiving vacancy payments. These vouchers are not reported in any other field, but are eligible for administrative fees.

(d) Reporting the number of PBVs under a HAP contract and not leased with Vacancy Payments and Associated Vacancy HAP expenses. In this field, the total number of PBVs that are under a HAP contract and are not leased, but are receiving vacancy payments. These vouchers are not reported in any other field but are eligible for administrative fees.

(e) Reporting HAP Expenses. Include the number of PBVs under a HAP contract and not leased with Vacancy Payments and Associated Vacancy HAP Expenses. The total HAP expense associated with PBVs under a HAP contract and not leased with vacancy payments. These expenses are also reported in the AOV HAP expense field. NOTE: RAD Rehab Assistance payments should not be reported in the field, but should be reported in the RAD 1 HAP expense field.

(6) Non-Compliance. Pursuant to 24 CFR §982.152(d), HUD may reduce or offset any administrative fee to the PHA, in the amount determined by HUD, if the PHA fails to perform PHA administrative responsibilities correctly or adequately under the program (for example, failure to submit form HUD-50058 or to complete VMS data reporting on a timely basis or at all).

If the PHA fails to comply with reporting requirements, HUD may reduce the PHA's administrative fees. The reduction will be calculated beginning the first day of the month following the submission closing due date. The monthly reduction will continue until such time as the PHA complies with the reporting requirements or a waiver is granted. The imposition of such reductions will be communicated under separate cover and may represent a permanent reduction in funding for administrative fees for the current calendar year that shall not be reversed. However, this will not impact the baseline administrative fee calculations.

Appendix IV. HCV, Homeownership, and PBV Inspection Requirements

(1) Overview. HCV program inspection requirements are governed by 24 CFR Part 982, Subpart I. Most HCV inspection requirements are applicable to the PBV program and to the Homeownership Option, but there are a number of HCV inspection requirements that do not apply to either of these programs:

- Table 1 lists the HCV inspection requirements that do not apply to the PBV program. The provisions not applicable to the PBV program are found at 24 CFR §983.2(c)(4) and 24 CFR §983.101(a).
- Table 2 lists the HCV inspection requirements that do not apply to the Homeownership Option. The provisions not applicable to the Homeownership Option are found at 24 CFR §982.641(d).

Table 1: HCV Inspection Requirements Not Applicable to the PBV Program

Regulation	HCV Provision	Reason
24 CFR §982.401(j)	Lead-based paint requirements under 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 part 35, subparts A, B, M, and R.	While 24 CFR §982.401(j) does not apply to the PBV program, lead-based paint requirements apply to the PBV requirement by virtue of 24 CFR §983.4 and 24 CFR §983.101(c). Part 35, subparts A, B, H, and R (instead of subpart M) of the lead-based paint implementing regulations apply to the PBV program.
24 CFR §982.402(a)(3)	Entering the unit size on the voucher issued to the family.	Not applicable to the PBV program — unlike the HCV program, PBV families are not issued a Housing Choice Voucher.
24 CFR §982.402(c)	Effect of family unit size in the amount of subsidy.	Not applicable to the PBV program — unlike the HCV program, payment standards are not used to determine the amount of rent paid by a family under the PBV program.
24 CFR §982.402(d)	Size of unit occupied by the family.	Not applicable to the PBV program — unlike the HCV program, payment standards are not used to determine the amount of rent paid by a family under the PBV program.
24 CFR §982.403	Terminating the HAP contract when the unit is too small.	PBV requirements for family occupancy of wrong-size units are found at 24 CFR §983.260.

24 CFR §982.405(a)	PHA requirement for initial and periodic unit inspection.	Requirements on timing of inspections for the PBV program are found at 24 CFR §983.103.
24 CFR §982.406	Enforcement of HQS — neither the family nor any other party other than the PHA or HUD, has the right to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA for alleged failure to enforce HQS.	HQS enforcement provisions related to the PBV program are found in 24 CFR §983.101(d).

Table 2: HCV Inspection Requirements Not Applicable to the Homeownership Option

Regulation	HCV Provision	Reason
24 CFR §982.403	Terminating the HAP contract when the unit is too small.	Not applicable to the Homeownership Option — unlike the HCV program, there is no HAP contract between the PHA and the landlord under the Homeownership Option.
24 CFR §982.404	Owner and family responsibility for maintenance of the unit and PHA remedies.	Not applicable to the Homeownership Option — unlike the HCV program, the family is not under a lease but is rather the owner of the unit. Family obligations under the Homeownership Option are found at 24 CFR §982.633.
24 CFR §982.405	PHA requirement for initial and periodic unit inspection.	Not applicable to the Homeownership Option — unlike the HCV program, the PHA is not required to conduct periodic inspections after the initial inspection, although the PHA may establish a policy in its Administrative Plan that periodic inspections will be conducted.

PBV program-specific inspection requirements, which supplement the HCV inspection requirements that do apply to the PBV program, are found at 24 CFR Part 983, Subpart C. Likewise, program-specific inspection requirements specific to the Homeownership Option are found at 24 CFR §982.631(a).

See Attachment I of this notice for more information on PBV biennial inspection requirements.

(2) PBV Pre-Selection Inspections. PHAs are required to inspect the proposed site before the selection proposal date. This requirement is applicable to all housing types (existing, new, and rehabilitated housing). Pre-selection inspection considerations include, but are not limited to, adequacy of streets and utilities, and whether the size, contour, and exposure of the property is suitable for the planned development.

U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:
Directors of HUD Regional and Field Offices of Public Housing;
Agencies that Administer the Housing Choice Voucher Program

Notice PIH 2011-50 (HA)

Issued: September 15, 2011

Expires: Effective until amended, superseded, or rescinded

Cross References: Notices PIH 2010-23 and PIH 2009-11; *Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program* published in the *Federal Register* on May 6, 2008

Subject: Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers

1. Purpose. The purpose of this notice is to reinstate Notice PIH 2010-23 on the same subject with a significant revision in this section and the addition of section 2e. Section J of the *Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program* (Operating Requirements) published in the *Federal Register* on May 6, 2008, stated that the Department will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with 24 CFR part 983. This notice provides continued guidance to those PHAs that have been awarded HUD-VASH vouchers that are interested in project-basing a portion of those vouchers. Previously no more than **50 percent** of a PHA's allocation of HUD-VASH vouchers could be project-based. Please note that this limitation has been removed in order to provide PHAs with additional flexibility in administering their HUD-VASH program. However, the number of HUD-VASH project-based units must still be within the 20 percent maximum budget authority that may be allocated to project-based voucher (PBV) assistance in accordance with 24 CFR Section 983.5(a).

All types of PBV proposals will be considered: existing units, newly constructed units and substantially rehabilitated units. Proposals must be submitted to HUD Headquarters, Room 4216, Washington, DC, 20410-5000, Attention: Phyllis Smelkinson.

Requests will not be considered unless the Veteran's Affairs Medical Center (VAMC) or Community-Based Outpatient Clinic (CBOC) is in support of this project. The VAMC or CBOC must be in agreement with the PHA prior to the submission of the PBV proposal to HUD for review. When submitting these requests, they must be signed by the PHA's Executive Director (or equivalent official) and the VAMC's or Veterans Integrated Service Network's (VISN) Director and the VA Network Homeless Coordinator. The VA officials may include letters of support in lieu of signing the proposal cover letter.

The review factors in Section 2 of this notice will be considered when determining

whether to approve a request received under this notice. In addition, the impact such an approval will have on a HUD-VASH family's right to mobility will also be considered. Final decisions regarding approval of PBV proposals will be made by HUD Headquarters and the HUD-VASH Program leadership at the VA Central Office.

2. Review Factors. The following factors must be addressed. Please note that the PHA's obligation to review all items mandated by the PBV regulation is unaffected by the submission requirements detailed in this section.

a. An explanation of why the PHA is proposing to project-base HUD-VASH vouchers rather than providing tenant-based assistance.

b. A description of challenges voucher holders (and HUD-VASH voucher holders, in particular) face in the local rental market. This would include the success rate for HUD-VASH voucher holders (the number of vouchers issued that leased up within a period defined by the PHA) and the utilization rate reflected on the PHA's latest Section Eight Management Assessment Program score, or the calendar year rate, whichever is more recent.

c. For newly constructed/substantially rehabilitated units, the length of time HUD-VASH vouchers would be shelved (not utilized) while waiting for the PBV units to be completed.

d. A description of the proposed project including the following data:

i. Total number of proposed PBV units and buildings in the project;
ii. Poverty rate of the census tract in which the site is located;
iii. PHA Plan and Administrative Plan policies on deconcentrating poverty and expanding housing and economic opportunities, if applicable to the census tract's poverty rate (see 24 CFR Section 983.57(b)(1));
iv. Any HUD-VASH related supportive services on or near the premises of the proposed site; and
v. Accessibility of the proposed site to the VAMC or CBOC, transportation, and social and medical services.

e. In regard to Section 3 below, documentation of the PHA's ability to provide HUD-VASH tenant-based or regular tenant-based vouchers (if the participant no longer needs case management) if the family wants to move from its PBV unit after 12 months. Also, HUD will consider the PHA's leasing rates in both the regular and HUD-VASH program when determining whether HUD-VASH families will be able to move from their PBV units after 12 months with or without case management.

f. For all projects, a statement confirming that the project was selected in accordance with 24 CFR § 983.51, *Owner Proposal Selection Procedures.*

3. Continued Assistance for Families that Move from Project-Based Units.

In accordance with 24 CFR Section 983.260(a) and the lease, the family may terminate the assisted lease anytime after the first year of occupancy. In 24 CFR Section 983.260(b) it is further stated that 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 as defined in 24 CFR Section 983.3 This section states that comparable rental assistance would be 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 income. However, in accordance with 24 CFR Section 983.260(c), **before** providing notice to terminate the lease (with a copy to the PHA), the family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance; if a voucher or other comparable tenant-based rental assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

In accordance with section g. of the Operating Requirements, as a condition of PBV rental assistance, a HUD-VASH family must receive case management services from the VAMC or CBOC; however, a VAMC or CBOC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such cases where a HUD-VASH family wishes to move from its PBV unit, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers to free up the HUD-VASH voucher for another eligible family referred by the VAMC or CBOC.

Where case management is still required, tenant-based rental assistance will be limited to jurisdictions where VAMC or CBOC case management services are available as defined in section II.f. of the Operating Requirements and any other applicable notices.

However, to ensure that all PBV units under a housing assistance payments contract remain continuously funded, the following must be implemented when a HUD-VASH family is eligible to move from its PBV unit and there is no other comparable tenant-based rental assistance to offer the family:

a. If a HUD-VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA could require the family to wait for a HUD-VASH tenant-based voucher for a period not to exceed 180 days;

b. If a HUD-VASH tenant-based voucher is still not available after that period of time, the family must be allowed to move with its HUD-VASH voucher and the PHA would be required to replace the assistance in the PBV unit with one of its regular vouchers unless the PHA and owner agree to remove the unit from the HAP contract;

c. If after 180 days, a HUD-VASH tenant-based voucher does not become available and the PHA does not have sufficient available funding in its HCV program to attach assistance to the PBV unit, the family may be required to remain in its PBV unit until such funding becomes available. In determining if funding is insufficient, the PHA must take into consideration its available budget authority, which also includes unspent prior year HAP funds in the PHA's Net Restricted Assets account.

4. Program Requirements. All projects must be selected, developed and operated in accordance with PBV program requirements found at 24 CFR part 983, this notice and the Implementation of the HUD-VASH Program (Operating Requirements) published in the *Federal Register* on May 6, 2008, with the exception of II.c. (Initial Term of the Housing Choice Voucher) and II.d. (Initial Lease Term).

5. Announcement of Additional PBV Awards. The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (the Act) (Public Law 112-10) enacted April 15, 2011, provided $50 million dollars of funding for HUD-VASH vouchers as authorized under section 8(o)(19) of the United Stated Housing Act of 1937. With the broad flexibility under the Act to address the needs of homeless veterans, the Department decided to fund an additional five PHAs under Notice PIH 2010-40 *(Set-Aside Funding Availability for Project-Basing HUD-VASH Vouchers).* This allowed the Department to fund those PHAs that achieved the same number of points as other selected applications, but were not originally selected through the lottery process. Those PHAs are: (1) Providence (RI) Housing Authority; (2) Tallahassee (FL) Housing Authority; and (3) Washington (DC) Housing Authority.

5. Information Contact. Inquiries about this letter should be directed to Phyllis Smelkinson in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138 or by email at Phyllis.Smelkinson@hud.gov.

6. Paperwork Reduction Act. The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The active information collection contained in this notice has been approved under the PRA OMB Control Number 2577-0169.

/s/

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of: Directors of HUD Regional and Field Offices of Public Housing; Agencies that Administer the Housing Choice Voucher Program	**Notice PIH 2009-11 (HA)** Issued: March 16, 2009 Expires: March 31, 2010 Cross References: Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program published in the *Federal Register* on May 6, 2008

Subject: Project-Basing HUD-Veterans Affairs Supportive Housing Vouchers

1. Purpose. As noted in section J of the Implementation of the HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program (Operating Requirements) published in the *Federal Register* on May 6, 2008, the Department will consider, on a case-by-case basis, requests from a public housing agency (PHA) to project-base HUD-VASH vouchers in accordance with 24 CFR part 983. The purpose of this Notice is to provide guidance to those PHAs that were awarded HUD-VASH vouchers that are interested in project-basing a portion of these vouchers. Please note that HUD and the Department of Veterans Affairs have determined that no more than **50 percent** of a PHA's allocation of HUD-VASH vouchers (rounded down) may be project-based. This number must be within the 20 percent maximum budget authority that may be allocated to project-based voucher assistance in accordance with 24 CFR Section 983.5(a). All types of project-based proposals will be considered: existing units, newly constructed units and substantially rehabilitated units. Proposals must be submitted to HUD Headquarters, Room 4210, Washington, DC, 20410-5000, Attention: Kathryn Greenspan.

Requests will not be considered unless the Veteran's Affairs Medical Center (VAMC) is in support of this project. The VAMC should be consulted by the PHA prior to the submission of the PBV proposal to HUD for review.

Please note that all sections of the Operating Requirements will apply to project-basing HUD-VASH vouchers with the exception of II.c. (Initial Term of the Housing Choice Voucher) and II.d (Initial Lease Term). With respect to the initial lease term, the term must be for at least one year for PBV units.

2. Review Factors. When submitting these requests, which must be jointly signed by a PHA and Veterans Affairs Medical Center (VAMC) official, the following factors must be addressed. Please note that the PHA's obligation to comply with all items mandated by the PBV regulation is unaffected by the submission requirements detailed in this section.

a. An explanation of why the PHA is proposing to project-base HUD-VASH vouchers rather than providing tenant-based assistance.

b. A description of challenges voucher holders (and HUD-VASH voucher holders, in particular) face in the local rental market. This would include the success rate for HUD-VASH voucher holders (the number of vouchers issued that leased up within a period defined by the PHA) and the utilization rate reflected on the PHA's latest Section Eight Management Assessment Program score or the calendar year rate whichever is more recent.

c. For newly constructed/substantially rehabilitated units, the length of time HUD-VASH vouchers would be shelved (not utilized) while waiting for the project-based voucher units to be completed.

d. A description of the proposed project including the following data:

i. Total number of proposed project-based voucher units and buildings in the project;
ii. Poverty rate of the census tract in which the site is located;
iii. A description of how selection of the proposed project is consistent with PHA Plan and Administrative Plan policies on deconcentrating poverty and expanding housing and economic opportunities.
iv. Any HUD-VASH related supportive services on or near the premises of the proposed site; and
v. Accessibility of the proposed site to the VAMC, transportation, and social and medical services.

3. Continued Assistance for Families that Move from Project-Based Units.

In accordance with 24 CFR Section 983.260(a), the family may terminate the assisted lease anytime 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. Section 983.260(b) further states that 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 as defined in Section 983.4.

In addition, in accordance with section g. of the Operating Requirements, as a condition of PBV rental assistance, a HUD-VASH family must receive the case management services from the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such cases where a HUD-VASH family wishes to move from its project-based assisted unit, at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers to free up the HUD-VASH

voucher for another eligible family referred by the VAMC. If there is no regular voucher to offer the family, the HUD-VASH family must be allowed to keep its HUD-VASH voucher when moving to another unit.

Pursuant to the requirements above, the PHA is limited to the following options cited below when a HUD-VASH family wishes to move from the project-based assisted unit after the first year of occupancy. Please note that for HUD-VASH families that still require case management, a. and b. apply. In addition, tenant-based assistance will be limited to jurisdictions where VAMC case management services are available as defined in section II.f. of the Operating Requirements. For families that no longer require case management, c. applies.

Other than exceptions noted here, all regular PBV requirements under 24 CFR Part 983 apply.

a. The PHA must issue the family an available HUD-VASH voucher to be used as a tenant-based voucher in which case another HUD-VASH family will occupy the project-based unit to which the HUD-VASH assistance is attached.

b. If there are no HUD-VASH vouchers available, the family may take its HUD-VASH voucher to use as a tenant-based voucher and the PHA may attach a regular voucher, if available, to the project-based unit which must be occupied in accordance with the PHA's preferences for the unit. In this case, preferences cannot be limited to HUD-VASH voucher holders or participants.

c. If the family no longer requires case management as determined by the VAMC, the family may be offered an available tenant-based voucher or other comparable tenant-based rental assistance. If neither is available, b. will apply.

6. Information Contact. Inquiries about this letter should be directed to Phyllis Smelkinson, Laure Rawson or Kathryn Greenspan in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 402-4138, 2425, or 4055, respectively.

7. Paperwork Reduction Act. The information collection requirements contained in this Notice is in the process of being reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C 3520). In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Paula O. Blunt, General Deputy Assistant Secretary
for Public and Indian Housing

Chapter 21:

PROJECT-BASED VOUCHER PROGRAM

21.1 INTRODUCTION
[24 CFR §983.5 and §983.2]

The Project-Based Voucher (PBV) program is administered by Public Housing Agencies (PHA's) who also administer the tenant-based Housing Choice Voucher program under an Annual Contributions Contract (ACC) with HUD. PBV is assistance that is tied directly to a unit in an approved project, unlike the Housing Choice Voucher program, where assistance is tied to the participant. HUD permits PHA's to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance. The policies regarding the Housing Choice Voucher program apply to the PBV program, except where they are specifically altered in this chapter.

In administering the Project-Based Voucher program, LACDA's goals are to:

- Attract more affordable developments to the LACDA's jurisdiction;
- Preserve affordable units that might otherwise become market-rate units;
- Increase affordability of housing for families making below 30% of the area median income;
- Further HUD and LACDA goals of deconcentration; and
- Increase housing opportunities for target populations (ex. Elderly, Disabled, Chronically Homeless, Special needs families, Transition aged youth)

The LACDA may enter into contracts for Project-Based Vouchers based on the policies outlined in this chapter.

21.2 LEVEL OF ASSISTANCE
[24 CFR §983.6; FR Notice 1/18/2017]

The LACDA will operate a project-based voucher program using up to 20% of the authorized units for Project-Based Vouchers.

When PBV units are already selected for project-based assistance either under an agreement to enter into HAP contract or a HAP contract, the LACDA is not required to reduce the number of the units if the amount of authorized units is subsequently reduced. However, the LACDA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the LACDA has vouchers available for project-basing.

21.2.1 Additional project-based units
[FR Notice 1/18/2017; Notice PIH 2017-21]

As permitted, LACDA may project-base an additional 10 percent of its vouchers above the 20 percent program limit. The vouchers may be distributed among one, all, or a combination of the categories as long as the total number of vouchers does not exceed the 10 percent cap. Vouchers under this requirement will be tied to units that qualify under this exception only if the units:

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

Impact on Existing Contract. PBV units that fall into one of the four categories listed above may be covered by this 10 percent exception authority only if the units are covered under a HAP contract that was first executed on or after April 18, 2017. Units added on or after April 18, 2017, through an amendment of a HAP contract that was first executed prior to April 18, 2017, are not eligible for the 10 percent exception authority.

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

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

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

21.3 HUD NOTIFICATION OF INTENT TO PROJECT-BASE

The LACDA must notify HUD of its intent to project-base its vouchers. The LACDA must submit to the local HUD Office the following information:

- The number of units authorized under the ACC for LACDA;
- The number of PBV units entirely excluded from the percentage limitation;
- The number of units qualifying under the 10 percent program cap exception category;
- The number of units currently committed to PBV (excluding those PBV units meeting an exception). To arrive at the “number of units committed to PBV,” total the number of units that are:
    1. Currently under PBV HAP contract;
    2. Under an Agreement to Enter into HAP contract (AHAP); and/or
    3. Covered by a notice of proposal selection (24 CFR §983.51(d)); and

- The number of units to which the LACDA is proposing to attach project-base assistance through the new Request for Proposal (RFP) or selection.

The above information must be submitted no later than 14 calendar days prior to undertaking any of the following actions:

- Issuing a request for proposal (RFP) (24 CFR §983.51(b)(1));
- Selecting a project based on a previous competition (24 CFR §983.51(b)(2));
- If applicable, selecting a project without following a competitive process (certain PHA-Owned projects).

The LACDA must await a response from HUD prior to proceeding with the proposal.

21.4 OWNER PROPOSAL SELECTION PROCEDURE [24 CFR §983.51]

The LACDA may use one of the following methods to select owner proposals:

1. Request for Proposal (RFP): The LACDA may issue a competitive request for PBV proposals. An RFP may not be limited to a single site and may not impose restrictions that practically preclude owner submission of proposals for PBV on different sites.

   The LACDA will publish an RFP in at least one newspaper of general circulation, as well as post the RFP on the LACDA's website. The submission deadline will be included in the RFP and a detailed application and selection criteria will be provided to all interested parties.

2. At the discretion of the LACDA, projects may be selected for PBV assistance using proposals for housing developed using federal, state, or local government housing assistance, community development, or a supportive services program that requires competitive selection of proposals (e.g., HOME, competitively-awarded Low-Income Housing Tax Credit, Affordable Housing Trust Funds), where the proposal has already been selected in accordance with such program's competitive selection requirements within three years of the LACDA's PBV selection date, and the earlier selection proposal did not involve any consideration that the project would receive PBV assistance.

   Once a project is selected to receive PBV assistance, the LACDA will give public notice within 60 days of its selection on its website at www.lacda.org.

21.4.1 Units Selected Non-Competitively

[FR Notice 1/18/2017 and PIH Notice 2017-21]

Project-based assistance for Housing Authority-owned properties will not be competitively bid. To project-base Housing Authority-owned units, the LACDA must be engaged in an initiative to improve, develop, or replace a public housing property or site. The LACDA can make project-based funding available in its owned properties in response to a written request. A separate request is required per property and must include the following: name and address of the

property; the total number of units; requested number of units project-based vouchers, number of vouchers requested per unit size (including square footage for SRO's), proposed rent per unit size, population to be served, and name, title and contact information for the project liaison. An original signature from the Department Director or authorized delegate is required on the written request. E-mailed and/or faxed requests will not be accepted.

21.5 HOUSING ELIGIBLE FOR ASSISTANCE [24 CFR §983.52 AND §983.53]

The LACDA will consider proposals for existing, newly constructed, and rehabilitated housing.

The following types of housing are ineligible under the Project-Based Voucher Program:

- Shared housing;
- Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care, except an assisted-living facility that provides home health care services such as nursing and therapy for residents of the housing;
- Units owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- Manufactured homes; and
- Transitional Housing;
- Units occupied by owners; and
- Units occupied by ineligible families.

PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

A member of a cooperative who owns shares in the project assisted under the PBV program is not to be considered an owner for purposes of participation in the PBV program.

21.6 CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR §983.56]

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

21.6.1 Exception to 25 Percent per Project Cap [24 CFR §983.56 and PIH Notice 2017-21]

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

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

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services

Projects where the caps were implemented prior to HOTMA (HAP Contracts were executed prior to 04/18/2017) must continue to use the former exceptions until the project's HAP contract under the old requirements is renewed or unless the PHA and owner agree to amend the conditions of the HAP contract. However, the LACDA will not make changes to a HAP contract if it is determined that the change would jeopardize an assisted family's eligibility for continued assistance in the project.

21.6.2 Supportive Services – HOTMA

As of 04/18/2017, the project and LACDA must make supportive services available to all families receiving PBV assistance in the project, but the families does not actually have to accept and receive supportive services for the exception to apply to the unit. It is not necessary that the supportive services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible.

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, 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.

The LACDA will not require families living in excepted units to receive supportive services. Families will be offered the opportunity to enroll in either LACDA's FSS program or other Supportive Services Program offered through the project, as a condition of occupancy.

Supportive Services offered include, but are not limited to:

- LACDA's Family Self-Sufficiency (FSS) program;
- Case Management

- Mental Health Care
- Substance Use Services
- Employment and Training
- Education program where there is a reasonable expectation of leading to self-sufficiency
- Life Skills
- Physical Health Care
- Benefits Assistance
- Representative Payee
- Legal Assistance
- Child Care (if applicable)
- Adult Day Care

21.6.3 Pre HOTMA Projects

Projects under HAP contract in effect prior to April 18, 2017, remain obligated by the terms of those HAP contracts with respect to the requirements that apply to the number and types of excepted units in a project, unless the owner of the project and LACDA mutually agree to change those requirements.

The LACDA and owner may agree to change such HAP contract requirements as it pertains to the exception categories of elderly families and families eligible for supportive services. The LACDA and owner must not change the terms of an existing HAP contract to add a new category of excepted unit.

The PBV contract may not be changed to conform with the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g. the excepted units at the project include units designated for families with a household member with disabilities, and changing to the HOTMA standard would result in those units no longer being eligible as excepted units unless the owner makes supportive services available to all assisted families in the project).

A HAP contract may be amended, at LACDA's discretion, to add additional PBV units in the same project. The LACDA may use this amendment process to add units where applying the new project cap definition results in more PBV units. HOTMA overrides existing regulation so that new units may be added at any time during the term of the HAP contract without being subject to competitive selection procedures. All other requirements of 24 CFR §983.207(b) must be met, including not exceeding the 20 percent program cap.

21.6.4 Supportive Services – Pre-HOTMA Projects

For projects using the former supportive services statutory exemption (which required that the family be receiving the supportive services) and/or the exemption for families with a household member with disabilities, the LACDA and the owner will continue to operate under the pre-HOTMA requirements and will continue to renew HAP contracts under the old requirements, unless the LACDA and the

owner agree by mutual consent to change the conditions to conform with the HOTMA requirement.

21.6.5 Qualifications for Supportive Services – Pre HOTMA Projects

It is not necessary that the supportive services be provided at or by the project.

At least one member of the family must be receiving the supportive service for the unit to remain excepted from the 25% cap.

Participation in medical- or disability-related services is not required as a condition of living in an excepted unit, other than a substance use treatment program for the member of the family with the substance misuse disorder, although such services may be offered.

21.6.6 Supportive Services Monitoring – Pre HOTMA Projects

Participant compliance with a supportive service contract will be monitored at least annually. The LACDA will request a status update for the participant's supportive service contract at the anniversary of said contract. The LACDA may request a status update on the supportive service contract more frequently, at its discretion.

Providers of supportive services must provide the LACDA any changes to the program within thirty days of when those changes occur. Providers must also immediately report to the LACDA when a family fails to meet the supportive service contract requirements.

21.6.7 Failure to Meet Supportive Service Requirements – Pre HOTMA Projects

When a family living in an excepted unit fails to meet the requirements of a supportive service contract, and is living in the excepted unit because of the supportive services received, the LACDA will propose termination of the contract. The family will not be issued a voucher to move.

The owner and participant will be given a sixty-day notice of the proposed termination of the HAP contract. The owner may at that time terminate the lease and issue an order to vacate by the HAP contract termination date.

If a family fails to meet the requirements of the supportive service contract for good cause, as determined by the LACDA, and is qualified to become reinstated in the supportive service program within a reasonable time period, the LACDA may counsel the family on its obligations and allow reinstatement of the supportive service contract.

21.7 PROJECT SELECTION CRITERIA [24 CFR §983.57]

The following criteria will be considered when evaluating proposals for Project-Based Voucher assistance:

1. Housing that serves homeless families;
2. Housing that serves disabled families or individuals;

3. Housing that serves elderly families or individuals;
4. Housing that serves families with children, consistent with the needs indicated by the LACDA's waiting list; and/or
5. Other documented needs
6. Serving very low-income families in mixed-income projects;
7. Other appropriate criteria consistent with regulation.
8. Housing that provides an appropriate level of supportive services to residents;
9. Housing that serves low- to extremely low-income families for the life of the project;
10. Other criteria consistent with regulation.

21.7.1 Selection Requirements for All PBV Assisted Proposals

Eligible projects must meet the following LACDA requirement:

If any portion of a proposed new construction development site is within 500 feet of a freeway, the project must be designed in such a way as to exclude from this 500-foot freeway "buffer" area any portion of the residential building, as well as play areas, community rooms, gardens, patios, and other areas where residents may reasonably be expected to congregate. The LACDA shall review and approve, at its sole discretion, any site plans for developments of this type.

21.7.2 Selection Requirements for All Housing Types

A project may be selected to receive PBV assistance only if it is or will be located in a census tract that meets one of the following criteria:

(i) A HUD-designated Enterprise Zone, Economic Community or Renewal Community;

(ii) The concentration of assisted units will be or has decreased as a result of public housing demolition;

(iii) Is undergoing significant revitalization;

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

(v) New market rate units are being developed that will positively impact the poverty rate in the area;

(vi) Meaningful opportunities for educational and economic advancement exist.

Additionally, the site must be suitable in terms of furthering and facilitating all Fair Housing requirements.

The site must also meet the HQS site and neighborhood standards found in section 10.3.11 of this Plan.

21.7.3 Requirements for Selecting Existing and Rehabilitated Housing [24 CFR §983.151]

The LACDA will only select existing and rehabilitated housing projects that meet the following criteria:

(1) The site is 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. This requirement does not apply to senior projects.

21.7.4 Requirements for Selecting New Construction Housing

The LACDA will select only new construction housing projects that meet the following criteria:

(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 number (3) of this section.

(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;

a. Application of this sufficient, comparable opportunities standard involves assessing the following factors:

i. Significant number of assisted housing units is available outside areas of minority concentration.

ii. 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.

iii. There are racially integrated neighborhoods in the surrounding area.

iv. 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.

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

(vi) The project is necessary to meet overriding housing needs that cannot be met in that housing market area.

1. Application of the ‘‘overriding housing needs’’ criterion may permit approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a ‘‘revitalizing area’’).
2. An ‘‘overriding housing need,’’ may not serve as the basis for determining that a site is acceptable, if the basis for the decision is that discrimination related to 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.

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(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas poverty concentration.

(5) The neighborhood must not be seriously detrimental to family life or one 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.

HOTMA Changes to Definitions of PHA-owned Housing and Use of Independent Entities **[24 CFR §983.51(e), §983.59, FR-5976-N-03 and PIH Notice 2017-21]**

Definition of PHA-owned units: A unit in a project that is:

(a) Owned by the PHA (including a controlling interest in the entity that owns the unit)

(b) Owned by an entity controlled by the PHA

(c) Owned by an LLC or LP in which the PHA holds a controlling interest in the managing member or general partner

Controlling interest means:

(a) Holding more than 50% of the stock of any corporation; or

(b) Having the power to appoint more than 50% of the members of the board of directors of a non-stock corporation (such as a non-profit corporation); or

(c) Where more than 50% of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA; or

(d) Holding more than 50% of all managing member interests in an LLC; or

(e) Holding more than 50% of all general partner interests in a partnership; or

(f) Having equivalent levels of control (more than 50%) in other ownership structures

A unit is not considered to be PHA-owned when:

(a) The PHA holds a fee interest as ground lessor of the property (land) but not in the building itself

(b) The PHA holds only a security interest under a mortgage or deed of trust on the unit; or

(c) The PHA has only a non-controlling interest in an entity that owns the unit

If a unit is PHA-owned as defined above, the PHA must establish a separate legal entity to serve as the owner. Such entity may be a non-profit affiliate of the PHA, LLC, LP, corporation or other legally acceptable entity recognized under State law. Such entity would serve as the owner for purposes of execution of the HAP contract. The PHA and independent entity shall submit a joint certification to the HUD Field Office prior to performing any of the functions listed below, certifying that the PHA and independent entity have no legal, financial, or other connection that would create a bias. A unit of government at a level higher than the LACDA may perform these functions without HUD approval.

The independent entity must perform the following functions:

- Review the PHA's PBV selection process (May also be conducted by HUD Field Office)
- Establish contract rents and determine rent reasonableness
- Provide a copy of the rent reasonableness determination to the PHA and HUD Field Office
- Establish the term of the HAP Contract and any extensions if applicable
- Inspect the units

- Provide a copy of the inspection report to the PHA and HUD Field Office

21.8 AGREEMENT TO ENTER INTO THE HAP CONTRACT [24 CFR §983.152]

If a rehabilitated or newly constructed project, as defined by regulation, is selected by the LACDA to receive Project-Based Vouchers, the LACDA will enter into an Agreement to enter into a Housing Assistance Payment (AHAP) contract with the owner in the form required by HUD.

In the AHAP, the owner agrees to develop the contract units to comply with HQS, and the LACDA agrees that, upon timely completion of the development in accordance with the terms of the AHAP, the LACDA will enter into a HAP contract with the owner for the contract units.

The LACDA may not pay or enter into an agreement if commencement of construction or rehabilitation occurs after proposal submission. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing. Commencement of construction occurs when excavation of site preparation (including clearing of the land) begins.

Delays in completion of rehab/construction may result in termination of the agreement.

The PHA may extend the completion deadline for unforeseen factors outside of the owner's control.

The owner must obtain the PHAs approval for any changes in work. If the owner does not do so, the PHA may set a lower initial rent.

21.8.1 Subsidy Layering Review (SLR) [24 CFR §983.55]

The LACDA may only provide assistance in accordance with HUD subsidy layering regulations and other requirements.

A subsidy layering review will not be required to enter into an agreement or to execute a contract between the LACDA and the owner when a project has not received any form of government housing assistance, other than the PBV assistance.

A subsidy layering review is required for any new construction or rehabilitation project receiving a form of government housing assistance in addition to project-based vouchers. The LACDA will not enter into an AHAP with the owner until the project has successfully passed a subsidy layering review by HUD or other HUD-approved agency

The owner must certify in the HAP contract that the project has not received and will not receive any other form of public assistance during the life of the HAP contract other than that disclosed in the subsidy layering review.

21.8.2 Environmental Review [24 CFR §983.58]

The Project Based Voucher program is subject to National Environmental Policy Act environmental review pursuant to the requirements at 24 CFR Part §983.58 and 24 CFR Part 58.

If it is determined that an environmental review is required for new construction or rehabilitation projects, the LACDA will not commit any funds under PBV assistance nor enter into an AHAP with the owner until HUD approves a release of funds.

21.9 SELECTION OF PARTICIPANTS [24 CFR §983.251]

The LACDA will only provide PBV assistance to families determined eligible, consistent with Chapter Two of this Plan.

21.9.1 Waiting List

The LACDA will use a separate waiting list for each project receiving Project-Based Voucher assistance or sets of units within a project if there are multiple eligibility restrictions for special needs populations.

If applicable, projects receiving Project-Based Voucher or Project-Based VASH assistance are required to use a Coordinated Access System to identify and refer 80 percent of its eligible applicants for the project's waiting list.

Applicants currently on the tenant-based assistance waiting list will be given an opportunity to place their name on a PBV waiting list, with their original date and time intact. If a new applicant applies to the tenant-based waiting list, the applicant will be given the opportunity to also place their name on any open PBV waiting list.

Upon admission to the PBV program, the applicants name will be removed from any other project-based voucher waiting lists that the applicant has applied for.

21.9.2 Protection of In-Place Families

Families who reside in units selected to receive PBV assistance on the proposal selection date and who are also eligible in accordance with Section 2.2 of this Plan, will be given the opportunity to place their name on the appropriate PBV site-based waiting list. An absolute preference will be given to that family to be selected from the waiting list. If the family is then determined fully eligible for the PBV program under all LACDA eligibility criteria, the family will then be referred to the owner for an appropriately-sized unit in the project.

21.9.3 Local Preferences

Applicants on any PBV waiting list are subject to the system of local preferences as it pertains to that particular waiting list. PBV site-based waiting lists will have admissions preferences that reflect the target population of each project.

When PBV buildings are selected, the LACDA will publicly notice the selection, as well as the target population of each project. As new waiting lists are opened, a notice will be sent to the Housing Choice Voucher (Section 8) tenant-based waiting list identifying available site-based PBV lists and their respective admissions

preferences. If a site-based waiting list is opened to the public, it will be advertised on the LACDA's website, along with its admissions preferences.

Disabled families who need an available accessible unit at a particular project may be awarded first preference from the waiting list.

Disabled families may not be required to accept the supportive services offered nor can a preference be granted for those with a particular disability.

21.9.4 Refusal of Assistance

If a family refuses an offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the LACDA may remove the family from the site-based waiting list from which they were selected. Such refusal will not affect the family's position on the tenant-based waiting list or any other PBV site-based waiting list, nor affect any admissions preference for which the family qualifies.

21.10 INFORMATION FOR ACCEPTED FAMILIES [24 CFR §983.252]

When a family accepts an offer of PBV assistance, the LACDA will provide the family an oral briefing. Attendance at this briefing is mandatory. The briefing will include:

- A description of how the program works;
- Family and owner responsibilities.

A briefing packet will be provided with information regarding:

1. How the LACDA determines total tenant payment;
2. Family obligations; and
3. Applicable fair housing information.

21.11 LEASING OF CONTRACT UNITS [24 CFR §983.253]

Owners must lease contract units only to eligible families, selected and referred by the LACDA's from the waiting list, during the term of the HAP contract.

Owners must develop written tenant selection procedures consistent with the purpose of improving housing opportunities for very low-income families, related to program eligibility and an applicant's ability to perform lease obligations.

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

Owners must follow the LACDA's subsidy standards when leasing units to referred families.

21.12 VACANCIES [24 CFR §983.254]

The owner must promptly notify the LACDA of any current or expected vacancy in a contract unit. After owner notice, the LACDA will promptly refer a sufficient number of families to the owner to fill the vacancy.

If any contract unit has been vacant for at least 120 days since the owner notice of vacancy, the LACDA may give notice to the owner amending the HAP contract to reduce the number of contract units by the number of units that have been vacant for that period.

21.13 TENANT SCREENING
[24 CFR §983.255]

The LACDA may take into consideration any admission criteria outlined in Chapter Two of this Plan in order to screen applicants for eligibility; however, it is the responsibility of the owner to screen applicants for behavior and suitability for tenancy.

The LACDA will provide the owner with the tenant's current and former address, as well as the name and address of the current and/or former landlord, if known. This policy is consistent with information provided to owners under the Housing Choice Voucher program.

21.14 HOUSING ASSISTANCE PAYMENTS CONTRACT

The LACDA must enter into a Housing Assistance Payments (HAP) contract with the owner in order to provide housing assistance payments for eligible families. The LACDA will make housing assistance payments to the owner in accordance with the HAP contract, for contract units leased and occupied by eligible families during the term of the HAP contract.

The LACDA will use the most recent HUD-approved form of the HAP contract.

21.14.1 Execution of the HAP Contract
[24 CFR §983.204, 24 CFR §983.209]

Before the HAP contract may be executed, the LACDA will inspect each contract unit in accordance with section 21.15 of this chapter and Chapter Ten of this Plan.

For existing housing, the HAP contract must be executed within s of passed inspections for all proposed units under the HAP contract.

For new construction or rehabilitated housing, the HAP contract is executed within 60 days after the LACDA has inspected the completed units and is satisfied that said units are completed in accordance with the AHAP and the owner has furnished the required evidence of completion.

By execution of the HAP contract, the owner certifies:

- The owner is and will maintain all contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and in the leases with assisted families;

- Each contract unit is leased to an eligible family and the lease complies with the HAP contract and HUD requirements;
- Members of the assisted family reside in the contract unit and it is their only residence;
- The owner is not a relative of any member of the assisted family by blood or operation of law;
- The amount of the housing assistance payment is the correct amount due under the HAP contract;
- The rent to owner for each contract unit does not exceed the rent due to owner for any comparable, unassisted unit;
- The owner will not receive any other payments beyond the tenant rent and housing assistance payments for the contract unit; and
- The family does not own or have any interest in the contract unit.

21.14.2 Term of the HAP Contract [24 CFR §983.205 and PIH Notice 2017-21]

As of April 18, 2017, the LACDA may enter into a new HAP contract with an owner for an initial term of up to twenty years. The length of the initial term of the HAP contract may not be less than one year.

For any PBV HAP contract that is still within the initial term, the LACDA and owner may mutually agree to extend the contract for up to the maximum initial term of 20 years. If the HAP contract is no longer in the initial term, the LACDA will not extend the initial term.

The LACDA may further extend the HAP contract beyond 20 years from the end of the initial term as long as the following conditions are met:

- The LACDA must determine such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities;
- The determination must be made no earlier than 24 months prior to the expiration of the HAP contract.
- The term of the new extension may not exceed 20 years.

Regardless of the length of the extension, all such extensions must meet the same conditions.

The HAP contract may be terminated by the LACDA for insufficient funds. If it is determined there are insufficient funds available to continue to assist all contract units for the full term, the LACDA may give notice to the owner for all or any of the contract units, in accordance with HUD instructions.

21.14.3 Amendments to the HAP Contract [24 CFR §983.207]

Amendment to Substitute Contract Units – The LACDA may amend the HAP contract to substitute a different unit with the same number of bedrooms in the

same building for the previously assisted unit. Prior to the substitution, the LACDA will inspect the proposed substitution unit and determine reasonable rent.

Amendment to Add Contract Units – At the discretion of the LACDA and provided the number of PBV-assisted units in a project will not exceed the 25% cap or the 20% budget authority for the PBV program, the HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV units to a building.

If there are already exception units (units in excess of the 25% cap) designated in the HAP contract, the contract may be amended during the same three year period to add additional exception units, provided that the addition does not exceed the 20% budget authority.

The anniversary and expiration date for the added units in either situation will be the same as for the existing units under the HAP contract.

21.14.4 Termination of the HAP Contract by the LACDA
[24 CFR §983.205(c) and FR Notice 1/18/2017]

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

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

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP Contract, the PHA may termination the HAP contract by notice to the owner.

As such, the LACDA will implement the HAP Contract termination in accordance with HUD instructions.

21.14.5 Termination of the HAP Contact by the Owner
[24 CFR §983.205(d)]

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

21.14.6 Statutory Notice Requirements - Contract Termination or Expiration

[24 CFR §983.206; FR Notice 01/18/2017; and Notice PIH 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the LACDA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If

the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advanced notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The LACDA must provide the family with a voucher and the family must also be given the option by the LACDA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness if the gross rent exceeds the applicable payment standard. The family has a right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration of the PBV HAP contract are not new admissions to the HCV tenant-based program, and are not subject to income eligibility requirements or any other admissions requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

21.15 HOUSING QUALITY STANDARDS (HQS) INSPECTIONS [24 CFR §983.103]

HQS inspections will be conducted in accordance with Chapter Ten of this Plan. The LACDA may not perform inspections on units where there is a direct or indirect interest by any of its employees or officers.

The LACDA will inspect PBV units at the following times:

- Pre-selection – the LACDA will inspect the proposed site before the proposal of Existing Housing selection date. For existing units, units must substantially comply with HQS before the proposal selection date. Units must fully comply before the HAP contract may be executed;
- Pre-HAP Contract;
- Turnover – the LACDA must inspect a unit before a new family moves in. The unit must fully comply with HQS before a family may receive assistance in that unit;
- Annual – The LACDA will conduct inspections on a random sample of at least 20% of contract units in a building annually. Turnover inspections are not counted toward annual inspections.
- If more than 20% of the annual sample fails the HQS inspections, 100% of the contract units in the building must be inspected.
- Other times – the LACDA will inspect PBV units at other times as necessary to insure the contract units are in compliance with HQS and that the owner

is providing utilities, maintenance and other services in accordance with the HAP contract.

21.15.1 HQS Violation
[24 CFR §983.207]

The LACDA may make no HAP payments to the owner during any period in which the contract unit does not comply with HQS or any other HAP contract requirement.

Remedies for HQS violation include abatement or reduction in HAP payments, reduction of contract units, and termination of the HAP contract.

21.15.2 Inspecting PHA-owned Units
[24 CFR §983.103(f)]

In the case of Housing Authority-owned units, the inspection must be performed by an independent agency designated by the LACDA and approved by HUD. The independent entity must furnish a copy of each inspection report to the LACDA and to the HUD field office where the project is located. The LACDA 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 Housing Authority-owner.

21.16 RESTRICTIONS ON RENTING TO RELATIVES
[24 CFR §983.251(a)(4)]

The LACDA will not approve a tenancy if the owner, including principal owners or other interested parties, is the parent, child, grandparent, grandchild, sister, or brother of any member of the family unless the approval is the result of a reasonable accommodation for a disabled family member.

21.17 LEASE
[24 CFR §983.256]

Owners must use the same lease for contract units as for unassisted units, with the lease being in accordance with state law.

The lease must include the HUD tenancy addendum. All provisions in the tenancy addendum must be included in the lease. Provisions in the addendum shall prevail over provisions in the lease.

The initial term of the lease must be for at least one year.

In addition to an initial term of at least one year, the lease must provide for automatic renewal after the initial term. Automatic renewal may be in the form of:

- Renewal for successive definite terms (ex: Month to month or year to year)
- Automatic indefinite extension of the lease term

The lease must specify:

- Names of the owner and tenant;

- Identifying information of the unit rented;
- Term of the lease and any provision for renewal;
- The amount of tenant rent to owner;
- Specification of services, maintenance, equipment, and utilities to be provided by the owner;
- The amount of any charges for food, furniture, or supportive services.

21.17.1 Changes in the Lease

If the tenant and owner agree to any changes in the lease, the change must be in writing and must be submitted to the LACDA immediately.

The owner must notify the LACDA of any proposed change in the lease regarding responsibility for utilities. Such changes may only be made with approval of the LACDA. If the LACDA approves a change in responsibilities for utilities, rent reasonableness must then be re-determined. The rent to owner will be re-calculated from the effective date of the change.

21.17.2 Absence from the Unit

The LACDA's absence policies found in Chapter Six of this Plan will apply to the PBV program. The lease may specify a maximum period of family absence from the unit that is shorter than that specified by the LACDA.

The HAP contract will not be terminated if the family is absent for longer than the maximum period permitted by the LACDA.

21.17.3 Owner Termination of Tenancy and Eviction

Grounds for owner termination and eviction reflect the policies outlined in Chapter Fourteen of this Plan, except that an owner may not terminate tenancy after the initial term of the lease for business or economic reasons, or to repossess the unit for personal, family, or nonresidential use.

If an owner refuses to renew the lease without good cause, the family will be issued a tenant-based voucher and the unit will be removed from the HAP contract.

The lease terminates if the owner terminates the lease for good cause, or the owner and tenant agree to terminate the lease

Owners who wish to terminate a HAP contract by either allowing it to expire or refusing to renew it must give the LACDA and the tenants at least 1 year notice. If a proper notice is not given, the owner must allow families to remain in their units for the balance of the notice period without an increase in the tenant's portion of rent. Under this circumstance, the owner may not evict a family due to an inability to collect an increased tenant portion of rent. An owner may renew a terminating contract for a period long enough to give tenants at least a 1 year notice.

21.17.4 PHA Terminations
[24 CFR §983.2(c)(5)]

The LACDA may terminate a family that violates the family obligations of the PBV program. Subsequent to a proposed termination of a family's assistance, the LACDA will advise the family of its right to an informal hearing as outlined in chapter sixteen of this plan.

The LACDA is required to automatically terminate the HAP contract 180 calendar days after the last housing assistance payment is made to the owner.

- If the family still resides in the unit after the 180 day period and there is still no HAP payment on their behalf, the unit will be removed from the contract.
- If the family has resided in the unit for more than one year, they may request a tenant based voucher and attempt to find a unit for which there will be a HAP payment. No voucher will be issued to a family whose assistance has already been terminated.
- If the unit is in a fully assisted project it may be reinstated once the ineligible family vacates the unit, and in a partially assisted project, another unit may be substituted for the ineligible unit. In both cases the reinstatement/substitution must be in compliance with PBV regulations.

Additionally, the lease terminates if the LACDA terminates the HAP contract or if the LACDA terminates the family's assistance.

The termination of a family's assistance by the PHA alone does not result in an eviction. An owner must pursue eviction in local court. If the owner decides not to pursue eviction, the LACDA may elect to either substitute the ineligible unit or remove the ineligible unit from the HAP contract.

21.17.5 Security Deposits [24 CFR §983.258]

The owner may collect a security deposit from the tenant. The amount may not exceed that allowed by state and local law or that charged to unassisted units in the same building.

When the tenant moves out, the owner may use the amount of the deposit, in accordance with the lease and state and local law, as reimbursement for any unpaid tenant rent, damage to the unit, or any other amount the tenant owes under the lease.

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

If the balance is not sufficient to cover amounts the tenant may owe under the lease, the owner may seek the remainder from the tenant. The LACDA has no liability or responsibility for payment of any amount owed by the family to the owner.

21.18 CURRENT PARTICIPANT RIGHT TO MOVE WITH TENANT-BASED ASSISTANCE [24 CFR §983.260]

Eligible families may terminate the assisted lease at any time after the first year of occupancy. Families who wish to move must first contact the LACDA to request a voucher before submitting a lease termination notice to the owner. Once the LACDA has received a written request for a voucher, the family will be issued a new voucher. If the reexamination is current (within 12 months) the LACDA will not conduct a reexamination before issuing the voucher unless there are reported changes to income or the family composition that would require an interim reexamination. At the same time the voucher is issued, the family will receive a Request for Tenancy Approval (RTA). The family should begin looking for housing immediately in order to ensure a smooth transition to the new unit.

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

Requests to move for families wishing to port to another jurisdiction must be submitted in writing.

If a tenant-based voucher is not available at the time of the family's request, the PHA will give the family priority to receive the next available opportunity for continued tenant-based assistance.

21.19 FAMILY OCCUPANCY OF WRONG-SIZE OR ACCESSIBLE UNIT [24 CFR §983.260]

If the LACDA determines that a family is occupying the wrong-size unit, or a unit with accessibility features the family does not require, and is needed by a family that requires the accessibility features, the LACDA will offer the family continued assistance in another unit and will notify the family and owner immediately of its offer of continued assistance and determination.

The LACDA may offer continued assistance either in another PBV unit or a tenant-based voucher. If appropriate, the LACDA may refer the family to an available public housing unit or other public or private tenant-based assistance (e.g. HOME).

If the family is given a tenant-based voucher, policies under the Housing Choice Voucher program regarding voucher issuance and expiration will apply. If a family fails to lease a unit with the tenant-based voucher, assistance will be terminated upon expiration of the voucher (and any subsequent extensions granted by the LACDA)

Upon determination that the family is occupying a wrong-size unit or a unit with accessibility features not required by the family and continued assistance is offered in the form of a project-based voucher, the family will have ninety days in which to move to another unit. If the family fails to move or refuses the offer of continued assistance in another unit, assistance to the family will be terminated.

21.20 DETERMINING RENT TO OWNER [24 CFR §983.301, 24 CFR §983.302, and 24 CFR §983.303(b)(1)]

The amount of estimated rent to owner must be included in the Agreement for rehabilitated or newly constructed housing. The actual rent to owner must be determined at the beginning of the HAP contract term for all types of housing.

The LACDA may include as part of the HAP contract, a provision that the rent to owner will not be reduced below the initial rent. If the LACDA elects to include such a provision, the rent to owner will not be reduced below the initial rental amount during subsequent reasonable rent re-determinations. Additionally, rents will only be reduced below the initial amounts to correct errors in calculations or if additional housing assistance has been combined with the PBV assistance after the execution of the initial HAP contract and a decrease is required due to subsidy layering requirements.

The amount of rent to owner is redetermined at the owner's request for a rent increase and when there is a 10% decrease in the published FMR.

Except for certain tax credit units specified below, the amount of rent to owner must not exceed the lowest of:

- An amount determined by the PHA that does not exceed 110% of the FMR (or any exception payment standard approved by HUD), minus the utility allowance; The LACDA will cap this amount at the current payment standard in effect at the time of the determination.
- The reasonable rent; or
- The rent requested by the owner.

21.20.1 Housing Authority – Owned Units

[24 CFR §983.301(g)]

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

Therefore, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The LACDA must use the rent to owner established by the independent entity.

21.20.2 Redetermination of Rent to Owner

[24 CFR §983.302]

The LACDA will only redetermine rent to the owner when the owner requests an increase at the annual anniversary of the HAP contract or when there is a 10% decrease in the published FMR. Notice of rent increase and other limitations on rent adjustments must conform to the above stated policies and section 11.3 of this Plan.

If there is a decrease in rent due to a 10% decrease in the published FMR, the rent to owner must be decreased, whether or not the owner requested a rent adjustment.

The notice of rent adjustment from the LACDA constitutes an amendment of rent to owner specified in the HAP contract.

Rent reasonableness will be determined by a HUD-approved, independent entity for units owned by the LACDA. The entity will provide a copy of the determination to the LACDA and the HUD Los Angeles field office.

The LACDA will 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 Housing Quality Standards. The owner may not receive any retroactive increase of rent for any period of noncompliance.

21.20.3 Rent Determination for Projects with Other Subsidies [24 CFR §983.304]

Rents may not exceed rent limits as established by the applicable federal program for units subsidized under the following programs:

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

The LACDA may set reasonable rents up to 110 percent of the HUD Market Rent in projects receiving Low-Income Housing Tax Credits (LIHTC), even if the rent level exceeds the maximum rent under the LIHTC program.

The LACDA may, at its discretion include provisions in the HAP contract to reduce the initial amount of rent to the owner because of other governmental subsidies.

21.20.4 Rent Control and Other Rent Limitations [24 CFR §983.305]

Rent control and other rent limitations under local, state or federal law will apply.

21.21 PAYMENT TO OWNER [24 CFR §983.351]

The LACDA will make HAP payments to the owner in accordance with the HAP contract for the months in which the contracted unit is leased to and occupied by an eligible family. Except for discretionary vacancy payments described in section 21.20.1 of this chapter, the LACDA will not make any payments for any month after the month in which the family moves out of the unit. In order to continue receiving HAP payments, the owner must comply with all provisions of the HAP contract, including HQS.

21.21.1 Vacancy Payments [24 CFR §983.352]

If a family moves out of a contract unit, the owner may keep the payment for the full calendar month in which the family moves out. The owner may not keep the payment if the LACDA determines that the vacancy is the owner's fault.

Subject to available funding, the LACDA may provide for vacancy payments to the owner not to exceed two months following move out. The vacancy payment may not exceed the amount of monthly rent under the assisted lease, minus any rent received by the owner, including any available amount from the tenant's security deposit.

Vacancy payments may only cover periods the unit is actually vacant.

The LACDA will only make vacancy payments to the owner if:

- The owner gives prompt, written notice to the LACDA certifying that the family vacated the unit, including the date the family moved out within 72 hours upon learning of the move out, and certifies:
  - The vacancy is not the fault of the owner and the unit was vacant during the period claimed;
  - The owner has taken every reasonable step to minimize the likelihood and length of the vacancy.

The owner must then submit a form requesting vacancy payments and provide the amount of the tenant's security deposit with any amount available to reimburse unpaid rent. The form must accompany receipts substantiating any damages the owner claims from the security deposit. The owner must certify on this form that no other payments were received for the unit during the period vacancy claimed.

21.21.2 Other Charges and Fees [24 CFR §983.354]

The owner may not require the family to pay charges for any meals or supportive services unless the project is an assisted living development, in which case owners may charge tenants, family members, or both for meals and supportive services. These charges may not be included in the rent to owner and may not be used to calculate rent reasonableness. Nonpayment of such charges is grounds for termination under the lease only in an assisted living development.

The owner may not charge tenants or family members extra amounts for items customarily included in the rent in Los Angeles County, or provided at no additional cost for unsubsidized tenants on the premises.

CFR PART 983

Displaying title 24, up to date as of 10/19/2021. Title 24 was last amended 10/07/2021.

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Title 24

PART 983 - PROJECT-BASED VOUCHER (PBV) PROGRAM

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

Source: 70 FR 59913, Oct. 13, 2005, unless otherwise noted.

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) 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, 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 982.310 (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 § 982.407;

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

(6) Subpart K of Part 982: subpart K does not apply, except that the following 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), 982.619(a), (b)(1), (b)(4), (c); and

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 81 FR 12377, Mar. 8, 2016]

§ 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.

Covered housing provider. For Project-Based Voucher (PBV) program, "covered housing provider," as such term is used in HUD's regulations in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the PHA or owner (as defined in 24 CFR 982.4), as applicable given the responsibilities of the covered housing provider as set forth in 24 CFR part 5, subpart L. For example, the PHA is the covered housing provider responsible for providing the notice of occupancy rights under VAWA and certification form described at 24 CFR 5.2005(a). In addition, the owner is the covered housing provider that may choose to bifurcate a lease as described at 24 CFR 5.2009(a), while the PHA is the covered housing provider responsible for complying with emergency transfer plan provisions at 24 CFR 5.2005(e).

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

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

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

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

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

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the 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 project. A project 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 project in which the contract unit is located, including common areas and grounds.

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

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

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

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-project cap). See § 983.56(b)(2)(ii).

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

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

Rent to owner. The total monthly rent payable by the family and the 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, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

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

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

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

§ 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 development (including rehabilitation) of a project comprising nine or more assisted units.

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

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

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

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

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

Protection for victims of domestic violence, dating violence, sexual assault, or stalking. See 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking). For purposes of compliance with HUD's regulations in 24 CFR part 5, subpart L, the covered housing provider is the PHA or owner, as applicable given the responsibilities of the covered housing provider as set forth in 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.

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; 79 FR 36165, June 25, 2014; 81 FR 80818, Nov. 16, 2016; 85 FR 61568, Sept. 29, 2020]

§ 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 PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers, in accordance with § 983.6(d).

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

§ 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.

(d) Before a PHA issues a Request for Proposals in accordance with § 983.51(b)(1) or makes a selection in accordance with § 983.51(b)(2), the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

§ 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.

(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, 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.

(c) ***Cooperative housing.***

(1) ***Applicability of part 983.*** Except as provided in paragraph (c)(3) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: §§ 983.256(b) and (c), 983.258 and 983.259 do not apply.

(2) ***Applicability of part 982.***

(i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) ***Assistance in cooperative housing.*** Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of 24 CFR 983 apply.

(4) ***Rent to owner.*** The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with § 983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) ***Other fees and charges.*** Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014]

§ 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, with the following exceptions:

(1) ***PBC renewals.***

(i) ***General.*** Consistent with the PBC HAP contract, 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.

(ii) ***Renewal of PBC as PBV.*** At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G - Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) ***Housing quality standards.*** The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) ***Special housing types.*** HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605. 982.609 and 982.614).

(ii) ***Lead-based paint requirements.***

(A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBC program.

(B) 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.

(iii) ***HQS enforcement.*** The regulations in 24 CFR parts 982 and 983 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.

(c) ***Statutory notice requirements.*** In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 applies to the PBC program.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36166, June 25, 2014]

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

(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.

(g) Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36166, June 25, 2014]

§ 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 units substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36166, June 25, 2014]

§ 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; and

(6) Transitional Housing.

(b) ***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. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

(c) ***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 assistance. 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.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36166, June 25, 2014]

§ 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. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

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

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36166, June 25, 2014]

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

(a) ***25 percent per project 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 project or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

(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 project cap:

(i) Units in a single-family building;

(ii) Excepted units in a multifamily project.

(2) Terms

(i) “Excepted units” means units in a multifamily project that are specifically made available for qualifying families.

(ii) “Qualifying families” means:

(A) Elderly and/or disabled families; and/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 § 983.262(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 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) ***Combining exception categories.*** Exception categories in a multifamily housing project may be combined.

(4) ***Set-aside for qualifying families.***

(i) In leasing units in a multifamily project 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 projects.*** A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

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

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

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

§ 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(l).

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

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

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

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

(7) Except for 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 HUD has given a release of funds, as defined in § 983.3(b);

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

§ 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 PBV program requirements;

(2) ***Initial and renewal HAP contract term.*** The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

(3) 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.***

(1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to §

983.2 are also inapplicable to special housing types 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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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

(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) ***Biennial inspections.***

(1) At least biennially 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 inspection requirement.

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

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

(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.

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

[70 FR 59913, Oct. 13, 2005, as amended at 81 FR 12377, Mar. 8, 2016]

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) ***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.

(b) ***Requirement.*** The PHA must enter into an Agreement with the owner at such time as provided in § 983.153. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(c) ***Commencement of construction or rehabilitation.*** The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

(d) ***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 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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

§ 983.153 When Agreement is executed.

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

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

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

(c) ***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.

[70 FR 59913, Oct. 13, 2005, as amended at 85 FR 61568, Sept. 29, 2020]

§ 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.

§ 983.157 Broadband infrastructure.

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

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

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

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

[81 FR 92639, Dec. 20, 2016]

Subpart E - Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under part 983 (including assistance 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. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

§ 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 identity 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 project that will exceed the 25 percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014]

§ 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) ***15-year initial term.*** The PHA may enter into a HAP contract with an owner for an initial term of up to 15 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 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with § 983.59.

(b) ***Extension of term.*** A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36168, June 25, 2014]

§ 983.206 Statutory notice requirements: Contract termination or expiration.

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term "termination" means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

(d)

(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

[79 FR 36168, June 25, 2014]

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

(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.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36168, June 25, 2014]

§ 983.208 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.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36168, June 25, 2014]

§ 983.209 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.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36168, June 25, 2014]

§ 983.210 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.

(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. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.

(j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36168, June 25, 2014]

§ 983.211 Removal of unit from HAP contract.

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

(b) If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with paragraph (b) of this section, must be permissible under § 983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA's selection policies.

[79 FR 36168, June 25, 2014]

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, sexual assault, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program.

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

(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; 79 FR 36168, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

§ 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 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.

(4) The owner must comply with 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(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.

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

[70 FR 59913, Oct. 13, 2005, as amended at 81 FR 80818, Nov. 16, 2016]

§ 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 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, sexual assault, 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; 81 FR 80818, Nov. 16, 2016]

§ 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) ***Term of lease.***

(1) The initial lease term must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease for good cause;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36168, June 25, 2014]

§ 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. 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this part.

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

[70 FR 59913, Oct. 13, 2005, as amended at 73 FR 72345, Nov. 28, 2008; 75 FR 66265, Oct. 27, 2010; 79 FR 36169, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

§ 983.258 Continuation of housing assistance payments.

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

[79 FR 36169, June 25, 2014]

§ 983.259 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.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36169, June 25, 2014]

§ 983.260 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 project or in another project);

(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 the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(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, and remove the unit from the HAP contract.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36169, June 25, 2014]

§ 983.261 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.

(1) The above policies do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, moves out of a unit in violation of the lease, if such move occurs to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was threatened with imminent harm from further violence if he or she remained in the dwelling unit, or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move.

(2) If a family breaks up as a result of an occurrence of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, the PHA may offer the victim the 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.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36169, June 25, 2014; 81 FR 80818, Nov. 16, 2016]

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

(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 and/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 project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the PHA does not exercise its discretion under paragraph (e) of this section) 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 project in accordance with § 983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled

family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contact, the unit must be made available to and occupied by a qualifying family.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36169, June 25, 2014]

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 also redetermined 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 may be determined by the PHA pursuant to paragraph (b) of this section.

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

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36169, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

§ 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 10 percent decrease in the published FMR.

(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 noncompliance.

(c) ***Rent decrease.***

(1) 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.

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

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36170, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

§ 983.303 Reasonable rent.

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

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

(1) Whenever there is a 10 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 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 or project; 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 § 983.59, rather than by the PHA. The 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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36170, June 25, 2014; 81 FR 80583, Nov. 16, 2016]

§ 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: rent reduction.*** To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, 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; 79 FR 36170, June 25, 2014]

§ 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 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 tenancy of an assisted family for nonpayment 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.

FEDERAL REGISTER DOCUMENTS ON PBV/PBVASH

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Dated: July 10, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–14878 Filed 7–13–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–5976–C–06]

Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Implementation and request for comments; correction.

SUMMARY: On January 18, 2017, HUD published a document in the **Federal Register** making several Housing Choice Voucher (HCV) provisions of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) effective and requesting comment. This document makes technical corrections to the January 18, 2017, document.

DATES: *Effective date:* The effective date for the implementation guidance of April 18, 2017 is unchanged.

FOR FURTHER INFORMATION CONTACT: With respect to this supplementary document, contact Ariel Pereira, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Please direct all questions about the January 18, 2017 document to *HOTMAquestionsPIH@hud.gov.*

SUPPLEMENTARY INFORMATION

I. Background Information

On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and which statutory changes required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

On January 18, 2017, HUD published a second document at 82 FR 5458, making multiple HOTMA provisions impacting the HCV program effective and requesting comments. Several of the comments pointed out the need for technical corrections or clarifications to the January 18, 2017, implementation document. This document makes several technical corrections and clarifications to the January 18, 2017, implementation document, in part based on the public comments. HUD also received comments recommending changes that were not technical corrections or clarifications, but rather suggested alternative approaches to implementing the HOTMA provisions. HUD will take those comments under consideration.

II. Explanation of Corrections

A. Units Owned by a PHA (HOTMA § 105)—Controlling Interest

HOTMA amended section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding the regulatory definitions at 24 CFR 983.3 and 24 CFR 982.352. HOTMA establishes three categories under which a project is PHA-owned. A project is PHA-owned when the project is: (1) Owned by the PHA; (2) owned by an entity wholly controlled by the PHA; or (3) owned by a limited liability company (LLC) or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner. The January 18, 2017, implementation document (page 5463, section B), used the phrase ''50 percent or more'' to define a level of control that constitutes a controlling interest and would thus indicate PHA ownership. The threshold for control should be ''more than 50 percent'' rather than ''50 percent or more.''

This document also corrects a typographical error contained in the January 18, 2017, implementation document in the definition of ''controlling interest'' for purposes of establishing PHA ownership. Specifically, the implementation document incorrectly refers to equivalent levels of control in other ''organizational'' structures. This document corrects the definition to refer to ''ownership'' structures.

B. Units Not Subject to Project-Based Voucher (PBV) Program Unit Limitation (HOTMA § 106(a)(2)) and Projects Not Subject to Project Cap (HOTMA § 106(a)(3))—Flexible Subsidy Projects

HOTMA amended the 1937 Act to except certain units from both the PHA program unit percentage limitation at section 8(o)(13)(B) and the income-mixing requirement at section 8(o)(13)(D). Specifically, HOTMA excepts units of project-based assistance that ''are attached to units previously subject to federally required rent restrictions or receiving another type of long-term subsidy or project-based assistance provided by the Secretary.'' The January 18, 2017, implementation document (page 5465, section C.2.C, and page 5467, section C.3.D, respectively) inadvertently excluded from the list of excepted units those units that have received assistance under section 201 of the Housing and Community Development Amendments of 1978. Therefore, HUD is correcting the January 18, 2017, implementation document to add the Flexible Subsidy Program in both lists.

C. Units Not Subject to PBV Program Unit Limitation (HOTMA § 106(a)(2))—Replacement Housing

In discussing the units that are not subject to the PBV program unit limitation, the January 18, 2017, implementation document describes the circumstances under which PBV new construction units will qualify as replacement housing for the covered units and likewise are exempt from the program limitation (page 5465, section C.2.C(2)). One of the requirements is that the newly constructed unit is located on the same site as the unit it is replacing. In describing this requirement, the January 18 2017, implementation document inadvertently referred to the ''site of the original public housing development'' instead of ''site of the original development.'' To avoid any indication that this requirement is only applicable to former public housing units as opposed to all the covered forms of HUD assistance listed earlier in the January 18, 2017, implementation document, C.2.C(2)(b) is revised to strike ''public housing'' from the paragraph.

D. Changes to Income-Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Supportive Services Exception

HOTMA amends the 1937 Act with respect to the threshold for exemption from the income-mixing requirement. The income mixing requirement

exception for supportive services now applies to dwelling units assisted under the contract that are exclusively made available to ''households eligible for supportive services that are made available to the assisted residents of the project, according to the standards for such services the Secretary may establish.'' HOTMA requires that families must be ''eligible'' for the supportive services, rather than ''receiving'' the supportive services, for the units made available to such families to be excluded from the income-mixing requirement. As clarified in the January 18, 2017, implementation document (page 5467, section C.3.B(2)), this HOTMA change means that a PHA may not require family participation in the supportive services as a condition of living in an excepted unit. Therefore, a PHA may not rely solely on a supportive services program that would require a family to engage in the supportive services once the family enrolls in the program, such as Family Self-Sufficiency (FSS), for the unit to meet the supportive services exception.

The January 18, 2017, implementation document states that ''if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently *is no longer eligible* for the supportive services, the family must vacate the unit . . . and the PHA shall cease paying housing assistance payments on behalf of the ineligible family.'' Upon further consideration, HUD is concerned that the sentence may be misinterpreted to imply that a PHA could, under HOTMA, establish a supportive services exception based exclusively on participation in FSS (where participation in the supportive services is required as opposed to voluntary), rather than in combination with another supportive services option where participation in the supportive services is voluntary. Additionally, HUD has determined that this provision could be wrongly construed in a way that conflicts with current FSS requirements, which do not allow termination from the housing assistance program for failure to complete the FSS contract of participation. See the **Federal Register** notice entitled, ''Waivers and Alternative Requirements for the Family Self-Sufficiency Program'', published on December 29, 2014, at 79 FR 78100.

Therefore, HUD is correcting the language on page 5467 to remove the ambiguities and better express the requirements of the HOTMA changes.

E. Changes to Income-Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Units in Low-Poverty Census Tract Exception

HOTMA amended the 1937 Act with respect to the types of units that are exempt from the income-mixing requirement. The January 18, 2017, implementation document (page 5467, section C.3.B(3)), noted that ''projects that are in a census tract with a poverty rate of 20 percent or less'' are excluded from the cap. However, the January 18, 2017, implementation document should have clarified that while PBV projects located in a census tract with a poverty rate of 20 percent or less are excluded from the 25 percent unit cap, those projects are subject to an alternative income mixing requirement that is the greater of 25 units or 40 percent of the units. HUD is adding a sentence to this section as a clarification.

F. Changes to Income Mixing Requirements for a Project (Project Cap) (HOTMA § 106(a)(3))—Grandfathering of Certain Properties

There are two typographical errors in the last sentence of section C.3.C on page 5467. The word ''contact'' should be ''contract'' and the last word of the sentence should be ''project'' and not ''unit''.

G. Projects Not Subject to a Project Cap (HOTMA § 106(a)(3))—Replacement Housing

HOTMA amended the language in section 8(o)(13)(D) to exempt certain types of units receiving PBV assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. The January 18, 2017, implementation document (page 5468, section C.3.D(2)), provided an incorrect definition of new construction units that qualify for the exception as replacement housing. The definition in section C.3.D(2)(b) was supposed to match the definition provided on page 5465, section C.2.C(2)(b).

H. Attaching PBVs to Structures Owned by PHAs (HOTMA § 106(a)(9))

HOTMA amended the 1937 Act to add a new section 8(o)(13)(N), which allows a PHA that is engaged in an initiative to improve, develop, or replace a public housing property or site to attach PBVs to projects in which the PHA has an ownership or controlling interest, without following a competitive process. In the January 18, 2017, implementation document (page 5471, section C.6), HUD stated that, in order to avail itself of this exemption from the competitive award of PBVs, a PHA must ''be planning rehabilitation or construction on the project with a minimum of $25,000 per unit in hard costs.'' However, this minimum per unit cost would not be applicable in a situation where a PHA is replacing a public housing property or site with existing housing owned or controlled by the PHA.

Accordingly, in FR Doc. 2017–0091, beginning on page 5458 of the **Federal Register** of Wednesday, January 18, 2017, the following corrections are made:

1. On page 5463, in the first column, the final sentence of paragraph (3) is corrected to read as follows:

A ''controlling interest'' is—
(A) holding more than 50 percent of the stock of any corporation;
(B) having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
(C) where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
(D) holding more than 50 percent of all managing member interests in an LLC;
(E) holding more than 50 percent of all general partner interests in a partnership; or
(F) equivalent levels of control in other ownership structures.

2. On page 5465, beginning in the first column, paragraph C(1)(b)(i) is corrected by adding at the end a new paragraph, to read as follows:

(VII) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

3. On page 5465, beginning in the second column, paragraph (b) is corrected by removing ''public housing'' in the second sentence.

4. On page 5467, in the second column, the last two paragraphs of paragraph B(2) are corrected to read as follows:

A PHA may not require participation in the supportive services as a condition of living in an excepted unit, although the family must be eligible to receive the supportive services, and the supportive services must be offered to the family. As such, a PHA may not rely solely on a supportive services program that would require the family to engage in the services once enrolled, such as FSS, for the unit to qualify for the supportive services exception. In the case of a family that chooses to participate in the supportive services, as described by the PHA in the administrative plan, and successfully completes the supportive services objective, the unit continues to be an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.

However, if a family becomes ineligible for the supportive services during their tenancy (for reasons other than successfully completing the supportive services objective), the unit will no longer be considered an excepted unit under this category. If the PHA does not want to reduce the number of excepted units in their project-based portfolio, the PHA may: (i) Substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with 24 CFR 983.207(a), so that the unit does not lose its excepted status, or (ii) temporarily remove the unit from the PBV HAP contract and provide the family with tenant-based assistance. Note that the family would have to be ineligible for *all* the supportive services made available for the unit to lose its excepted status. For example, consider a project where the supportive services made available to assisted families in the project include both FSS supportive services (for families that voluntarily join the FSS program) and non-FSS supportive services (where, unlike FSS, participation in supportive services is not mandatory). If a family joined the FSS program but later dropped out of the FSS program, the unit would continue to be an exception unit provided the family is eligible for the non-FSS supportive services.

5. On page 5467, in the second column, paragraph B(3) is corrected by adding a new sentence at the end, to read as follows:

''For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project.''

6. On page 5467, in the third column, the last sentence of paragraph (C) is corrected to read as follows:

The PBV HAP contract may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (*e.g.,* excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the project.

7. On page 5467, beginning in the third column, paragraph D(1)(b)(i) is corrected by adding at the end a new paragraph, to read as follows:

(VII) Flexible Subsidy Program (section 201 of the Housing and Community Development Amendments of 1978).

8. On page 5468, in the second column, the second sentence of paragraph (b) is corrected by removing the parentheses and correcting it to read as follows:

An expansion of or modification to the prior project's site boundaries as a result of the design of the new construction project is acceptable as long as a majority of the replacement units are built back on the site of the original development and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

9. On page 5471, in the third column, the second paragraph of section 6 is corrected to read as follows:

In order to be subject to this non-competitive exception, the PHA must be planning: (A) rehabilitation or construction of the project or site with a minimum of $25,000 per unit in hard costs; or (B) replacement of the project or site with existing housing that substantially complies with HUD's housing quality standards. The PHA must detail in its administrative plan how it intends to use PBVs to improve, develop, or replace any public housing property or site, and, if applicable, must detail what works it plans to do on the property or site and how many units of PBV it is planning an adding to the site.

Dated: June 28, 2017.

Jemine A. Bryon,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 2017–14631 Filed 7–13–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–5976–N–03]

Housing Opportunity Through Modernization Act of 2016; Implementation of Various Section 8 Voucher Provisions

Correction

Rule document 17–00911 was inadvertently published in the Proposed Rules section of the issue of Wednesday, January 18, 2017, beginning on page 5458. It should have appeared in the Rules section.

[FR Doc. C1–2017–00911 Filed 7–13–17; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in August 2017. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective August 1, 2017.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*). PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for August 2017.[1]

The August 2017 interest assumptions under the benefit payments regulation will be 0.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for July 2017, these assumptions represent a decrease of 0.25 percent in the immediate rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

(a) Comments Due Date

We must receive comments by March 6, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GROB Aircraft AG Models GROB G 109 and GROB G 109B gliders, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as broken pivots of the tail wheel mounting bracket resulting from corrosion and damage due to wear. We are issuing this proposed AD to detect and correct if necessary any corrosion or damage to the tail wheel mounting bracket, which could cause loss of rudder control and result in reduced control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 3 months after the effective date of this AD or 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, and repetitively thereafter at intervals not to exceed every 100 hours TIS or 12 months, whichever occurs first, inspect the tail wheel mounting bracket following the Accomplishment Instructions in section 1.8 of GROB Aircraft AG Service Bulletin (SB) No. MSB817–70, dated September 28, 2016.

(2) If any damage is found during any inspection required in paragraph (f)(1) of this AD, before further flight, repair following GROB Aircraft AG Repair Instruction RI 817–015, dated September 16, 2016.

Note 1 to paragraph (f)(2) of this AD: The bolt in Figure 1, Pos. 10 of GROB Aircraft AG Repair Instruction RI 817–015, dated September 16, 2016, is welded into place onto the steel base plate. Therefore, in order to facilitate the removal of the bolt, the welding seams may be carefully ground off using caution to not damage the steel base plate, instead of completely cutting off the bolt head.

(3) Repairs made as required by paragraph (f)(2) of this AD do not qualify as terminating action for the repetitive inspections required in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0228, dated November 14, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0019. For service information related to this AD, contact GROB Aircraft AG, Product Support, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax: + 49 (0) 8268–998–200; email: *productsupport@grob-aircraft.com;* Internet: *grob-aircraft.com.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on January 6, 2017.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–00658 Filed 1–17–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–5976–N–03]

Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Implementation and request for comment.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Several of the statutory amendments made by HOTMA affect the Project-Based Voucher (PBV) program or the Housing Choice Voucher (HCV) program. HOTMA also gave HUD the authority to implement many of those changes by notice, and those statutory changes are not effective until HUD issues that notice. This document serves as the implementation notice for several of the provisions of HOTMA that impact the HCV and PBV programs, and seeks additional public input on both the implementing requirements in this document and future changes to these programs.

DATES: *Effective date: April 18, 2017.*

Comment due date: March 20, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this document. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Please direct all questions about this notice to *HOTMAquestionsPIH@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, President Obama signed HOTMA into law (Public Law 114–201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and which required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

This document implements new statutory provisions regarding certain inspection requirements for both HCV tenant-based and PBV assistance (found in § 101(a)(1) of HOTMA), the definition of PHA-owned housing (§ 105 of HOTMA), and changes to the PBV program at large (§ 106 of HOTMA) by providing the additional information needed for PHAs and owners to use those provisions. The document also implements and provides guidance on the statutory change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§ 112 of HOTMA).

While this document makes the provisions below effective, HUD seeks further public comment on the implementation of these provisions. Below each section describing the implementation of a statutory provision, HUD has included specific questions for public comment. All comments must be submitted using the two methods detailed above.

II. Implementation Information

A. Inspections of Dwelling Units (HOTMA § 101(a)(1))

Section 101(a)(1) of HOTMA adds a modified subparagraph (A) to section 8(o)(8) of the 1937 Act (42 U.S.C. 1437f(o)(8)). The amended subparagraph continues the requirement of inspections of dwelling units assisted under section 8(o) of the 1937 Act to determine that the units meet housing quality standards (HQS) prior to the PHA making a housing assistance payment. However, new language provides an exception to this requirement, allowing the PHA to approve the assisted tenancy and commence housing assistance payments if the unit fails the inspection but only has non-life-threatening HQS deficiencies. If a PHA makes payments under that exception, the PHA must withhold any assistance payments if the non-life-threatening deficiencies are not remedied within no more than 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS.

In addition, new language authorizes occupancy of a unit prior to the inspection being completed if the unit had, in the previous 24 months, passed an alternative inspection method under section 8(o)(8)(E). The PHA must inspect the unit within 15 days of receiving the Request for Tenancy Approval. Once the unit passes the HQS, the PHA may make assistance payments retroactively, dating back to the beginning of the assisted lease term, which is the effective date of the HAP contract. Per 24 CFR 982.309(b), the term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

This document does not implement other provisions in section 101(a) of HOTMA.

1. Occupancy Prior to Meeting HQS (§ 8(o)(8)(A)(ii) of 1937 Act)

As a result of the HOTMA amendments to Section 8(o)(8)(A)(ii) of the 1937 Act, PHAs may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions, as such conditions are defined by HUD. In exercising this administrative flexibility under § 8(o)(8)(A)(ii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If the PHA exercises this authority, this document overrides the requirement at 982.305(a)(2) and (b)(i) that the PHA has determined that the unit *meets* HQS before approval of the tenancy and beginning of the initial lease term. (The PHA must still conduct the HQS inspection prior to approval of the tenancy and the beginning of the initial lease term in accordance with those regulations.)

A. HUD Definition of Non-Life-Threatening and Life-Threatening Conditions

For the purposes of implementing § 8(o)(8)(A)(ii), HUD is defining a non-life-threatening condition as any condition that would fail to meet the housing quality standards under 24 CFR 982.401 and is not a life-threatening condition. Further, for the purposes of this implementation notice, HUD is defining life-threatening conditions as follows:

(1) Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following: (a) A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or (b) a strong gas odor detected with potential for explosion or fire, or that results in health risk if inhaled.

(2) Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following: (a) A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed; (b) a light fixture is hanging by its wires; (c) a light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit; (d) a receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed; (e) a receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed; (f) an open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses; (g) a cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections; (h) any nicks, abrasions, or fraying of the insulation that expose conducting wire; (i) exposed bare wires or electrical connections; (j) any condition that results in openings in electrical panels or electrical control device enclosures; (k) water leaking or ponding near any electrical device; or (l) any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.

(3) Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following: (a) the smoke detector is missing; or (b) the smoke detector does not function as it should.

(4) Interior air quality. A life-threatening condition under this standard is one of the following: (a) the carbon monoxide detector is missing; or (b) the carbon monoxide detector does not function as it should.

(5) Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-

threatening condition under this standard is one of the following: (a) The chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases; (b) a gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside; (c) a fuel fired space heater is not properly vented or lacks available combustion air; (d) a non-vented space heater is present; (e) safety devices on a fuel fired space heater are missing or damaged; or (f) the chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.

(6) Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following: (a) Any of the components that affect the function of the fire escape are missing or damaged; (b) stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or (c) the building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.

(7) Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.

(8) Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.

(9) Any other condition subsequently identified by HUD as life threatening in a notice published in the **Federal Register**. HUD will notify PHAs if such changes are made.

(10) Any other condition identified by the administering PHA as life-threatening in the PHA's administrative plan prior to this notice taking effect.

B. Administrative Plans

Before implementing § 8(o)(8)(A)(ii), PHAs must amend their HCV administrative plans to include HUD's definition of non-life-threatening conditions as any conditions that would fail to meet the housing quality standards under 24 CFR 982.401 and do not meet the definition of life-threatening provided in this notice. The PHA's HCV administrative plan must list the specific life-threatening conditions that will be identified through the PHA's inspections, including the life-threatening conditions listed in Section 1.A. above and any other conditions that the PHA identified in its HCV administrative plan as life-threatening prior to this notice taking effect.

The PHA must also specify in its administrative plan how it will apply the flexibility provided by § 8(o)(8)(A)(ii) to its HCV and/or PBV program. The PHA may opt to apply the policy to all the PHA's initial inspections or to a portion of the PHA's initial inspections. The PHA's administrative plan must specify the circumstances under which the PHA will enter into a HAP contract for a unit that fails the initial HQS inspection as a result only of non-life-threatening conditions and the circumstances under which a PHA will require the unit to meet all HQS standards before entering into the HAP contract.

The changes to the PHA's HCV administrative plan to define non-life-threatening conditions and to specify how the policy will be applied across its portfolio of units may constitute significant amendments to the PHA's PHA plan, in which case a PHA must follow its PHA plan amendment and public notice requirements before implementing § 8(o)(8)(A)(ii).

C. Application of Life-Threatening Definition to aAl Inspections

A PHA that chooses to implement § 8(o)(8)(A)(ii) must apply the list of life-threatening conditions identified in its HCV administrative plan to all HQS inspections that the PHA conducts, not just the initial inspections. In other words, PHAs that adopt § 8(o)(8)(A)(ii) must amend their HCV administrative plans to include HUD's definition of life-threatening conditions, as well as any additional life-threatening conditions included in the PHA's HCV administrative plan that were already defined in the PHA's HCV administrative plan prior to this notice taking effect, and must use those definitions in its ongoing HQS inspections and HQS enforcement activities as well as its initial inspections. The PHA must use the new definition of life-threatening deficiencies across all of its HQS inspections even if the PHA chooses to apply § 8(o)(8)(A)(ii) only to a portion of its initial inspections. The only exception to this uniformity requirement is the presence of deteriorated paint in units built before 1978 to be occupied by a family with a child under the age of 6. The presence of such hazards during the initial HQS inspection means a PHA may not approve the tenancy, execute the HAP contract and make assistance payments until lead hazard reduction is complete. However, in the case where the deficiency is identified for a unit under HAP contract during a regular or interim HQS inspection, lead hazard reduction need not be completed within 24 hours. Instead, PHAs and owners must follow the requirements in 24 CFR part 35.

D. Documenting the Absence of Life-Threatening Conditions

A PHA that chooses to implement § 8(o)(8)(A)(ii) must ensure that the unit does not have any life-threatening deficiencies before the PHA approves the assisted tenancy and executes the HAP contract. The PHA must document that the unit passes all inspection items that relate to any life-threatening deficiencies identified in the PHA's HCV administrative plan (including those on HUD's list of life-threatening deficiencies). HUD will provide guidance for PHAs on how to incorporate HUD's definition of life-threatening conditions into its regular HQS procedures for purposes of implementing § 8(o)(8)(A)(ii).

E. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(ii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. If the initial inspection on the unit identifies one or more non-life-threatening deficiencies, the PHA must provide the family a list of the deficiencies and offer the family the opportunity to decline to enter into the assisted lease without losing the voucher. The PHA must also notify the family that if the owner fails to correct the non-life-threatening deficiencies within the PHA-specified time period, the PHA will terminate the HAP contract, which in turn terminates the assisted lease, and the family will have to move to another unit in order to receive voucher assistance.

F. Housing Assistance Payments

PHAs that adopt § 8(o)(8)(A)(ii) may, with the agreement of the family, approve the assisted tenancy, execute the HAP contract, and make housing assistance payments for a unit that fails the initial HQS inspection only as a result of non-life-threatening conditions as defined above. If the non-life-threatening conditions are not corrected within 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS, the

PHA must withhold any further assistance payments until those conditions are addressed and the unit is in compliance with the housing quality standards. After the 30-day correction period has passed and the PHA begins withholding payments, the PHA may establish a policy regarding the maximum amount of time it will withhold payments before abating payments or terminating the HAP contract for owner non-compliance with HQS. Once the unit is in compliance, the PHA may use any payments withheld to make payments for the period during which payments were withheld.

The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances may the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

If the PHA adopts this administrative policy, 24 CFR 982.305(a) and (b) remain in effect, with the exception that the PHA is required to inspect the unit and determine that there are no life-threatening deficiencies (rather than determining the unit satisfies the HQS) before the approval of the assisted tenancy and the beginning of the assisted lease term.

G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(ii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to *HOTMA_HQS@hud.gov.* This notification allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(ii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(ii) will be scored based on the new statutory standard. Until further guidance is provided, PHAs should continue to report as usual in PIC (that is, the date the PHA enters into PIC for when the unit passes HQS inspection is the date that the unit is found to have no HQS deficiencies, including no non-life-threatening deficiencies).

Questions for Comment

1. Is HUD's definition of non-life-threatening conditions as any condition that does not meet HUD's definition of life-threatening appropriate? If not, is there an alternate definition HUD should use?

2. HUD's list of life-threatening conditions is based on the definition currently being used by the UPCS–V demonstration. Are there other sources that HUD should consider for this list?

3. Is establishing 180 days as the maximum time the PHA may withhold or abate payments before terminating the HAP contract for the owner's failure to make the repairs the appropriate time frame? Should this time period be shorter or longer?

4. How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(ii)?

5. Are there any other discretionary factors that PHAs should consider in implementing § 8(o)(8)(A)(ii)?

2. Alternative Inspections (§ 8(o)(8)(A)(iii) of 1937 Act)

The new § 8(o)(8)(A)(iii) of the 1937 Act authorizes occupancy of a unit prior to the PHA's inspection being completed if the property has, in the previous 24 months, passed an alternative inspection method that qualifies as an alternative inspection method pursuant to § 8(o)(8)(E). In this case, a PHA may also make assistance payments retroactively, dating back to the effective date of the HAP contract and assisted lease term, once the unit has been inspected and found to meet HQS standards. In exercising this administrative flexibility under § 8(o)(8)(A)(iii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If a PHA exercises this authority, this document overrides the regulatory requirement at 24 CFR 982.305(a)(2) and (b)(1)(i) that the PHA inspect the unit and determine it meets HQS prior to approving the tenancy and the beginning of the assisted lease term. The requirements of this document also overrides §§ 982.305(b)(2) and 982.305(c)(1) and (3).

A. Eligible Alternative Inspection Methods

In order to qualify as an alternative inspection method for § 8(o)(8)(A)(iii), the inspection method must meet the same requirements for the use of alternative inspections under 24 CFR 982.406. Specifically:

(1) The PHA must be able to obtain the results of the alternative inspection.

(2) If the alternative inspection employs sampling, the PHA may rely on such alternative method only if the HCV or PBV unit was included in the population of units forming the basis of the sample. For example, if a 100-unit property includes 20 units that are occupied by HCV-assisted families or are under a PBV contract, then those 20 units must be included in the universe of units from which the sample was pulled. This does not mean that the 20 units had to be included in the actual sample of units that were inspected under the alternative inspection, but that these units were included in the universe of potential units from which the sample was drawn.

(3) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, without prior HUD approval. However, before employing this alternative method the PHA must amend its HCV administrative plan and notify HUD as described below.

(4) If the PHA wishes to rely on an alternative inspection method other than that used for HOME, LIHTC, or inspections performed by HUD, the PHA must, prior to amending its HCV administrative plan, submit to HUD's Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method ''provides the same or greater protection to occupants of dwelling units'' as would HQS. A PHA may not rely upon such alternative inspection method unless and until REAC has reviewed and approved use of the method and the PHA has amended its HCV administrative plan and notified HUD as described below. A PHA that uses such alternative inspection method must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to

HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method for § 8(o)(8)(A)(iii).

B. Administrative Plans

The PHA must identify the alternative inspection method(s) being used in its HCV administrative plan, making clear the specific properties or types of properties for which the inspection method(s) will be employed. This change may be a significant amendment to the PHA Plan, in which case a PHA must follow its PHA Plan amendment and public notice requirements before using the alternative inspection method.

C. Authorization of Occupancy

Section 8(o)(8)(A)(iii) states that the PHA may ''authorize occupancy'' before the PHA completes its inspection if the property passed the alternative inspection. The PHA authorizes occupancy in response to a Request for Tenancy Approval (RFTA) received from the family. Upon receiving the RFTA, a PHA that elects to use this provision determines whether the property in which the unit is located received an inspection within the previous 24 months that qualifies as an alternative inspection and the unit meets any additional requirements established in the PHA administrative plan. If the property has passed the alternative inspection within the past 24 months, the PHA may approve the assisted tenancy before the PHA conducts the initial HQS inspection. If the PHA chooses to approve the assisted tenancy prior to conducting the HQS inspection, the PHA enters into the HAP contract with the owner and the owner and family enter into the lease agreement and HUD prescribed tenancy addendum before the PHA's HQS inspection takes place. The PHA must conduct the HQS inspection within 15 days of receiving the RFTA (as described below) and after it has executed the HAP contract.

In the case where the PHA exercises its authority under § 8(o)(8)(A)(iii), the PHA must execute the HAP contract with the owner before the PHA's inspection takes place. The PHA must execute the HAP contract with the owner on or before the beginning of the lease term, not within 60 days of the beginning of the lease term as provided in 24 CFR 982.305(c). Since the family will have moved into the unit before the PHA does the initial inspection, the PHA must have a contractual relationship with the owner at the time of the inspection so that the PHA can take enforcement action if the unit does not pass HQS and the owner does not make the necessary repairs within the required timeframes.

D. Timing of the PHA Inspection

Section 8(o)(8)(A)(iii) allows the PHA to authorize occupancy before the PHA's inspection is completed. It does not eliminate the requirement under § 8(o)(8)(A)(i) for the PHA (or designated entity) to conduct the initial inspection. Under the current program regulations at 24 CFR 982.305(b)(2), a PHA with up to 1,250 budgeted units in its tenant-based program must complete the initial inspection within 15 days of receiving the RFTA, and a PHA with more than 1,250 budgeted units in its tenant-based program must complete the initial inspection within a reasonable time after the PHA receives the RFTA. All PHAs that implement Section 8(o)(8)(A)(iii) must complete the initial inspection within 15 days of receiving the RFTA for units located in properties that have met the requirements of an eligible alternative inspection in the past 24 months. The 15-day standard applies to all units for which the PHA employs § 8(o)(8)(A)(iii), regardless of the size of the PHA's tenant-based program.

E. Housing Assistance Payments

The PHA must conduct the initial HQS inspection within 15 days of receiving the RFTA. If the unit passes the PHA's inspection, the PHA may make HAPs retroactively to the effective date of the HAP contract and the start of the assisted lease term. If the unit does not pass the PHA's inspection, and if the PHA has not adopted § 8(o)(8)(A)(ii) regarding the correction of non-life-threatening deficiencies, the PHA may not make housing assistance payments until the HQS deficiencies have been corrected. The PHA must notify the owner in writing of the defects and take enforcement action against the owner if any life-threatening defect (as identified in the PHA's HCV administrative plan) is not corrected within 24 hours or any other defect is not corrected within 30 calendar days or any PHA-approved extension. If the PHA has adopted § 8(o)(8)(A)(ii) and the unit has only non-life-threatening deficiencies, the PHA may make housing assistance payments according to the procedures specified in Section A.1. above.

In deciding whether to implement Section 8(o)(8)(A)(ii), HUD recommends that PHAs carefully consider the complications that could arise if a PHA enters into a HAP contract with an owner on the basis of an alternative inspection but then identifies HQS deficiencies in its initial inspection. The family may be living with these deficiencies during the correction period and may ultimately have to move if the owner is not willing to make the corrections. The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances will the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

F. Notification of Owners and Tenants

PHAs that adopt § 8(o)(8)(A)(iii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. When authorizing a family to move into a unit prior to the PHA's inspection, the PHA must advise the family of the PHA's list of life-threatening deficiencies so that the family can look for such items in the unit and notify the PHA immediately if such deficiencies are found or decline to enter into the lease with the owner.

G. Notification of HUD

PHAs that plan to adopt § 8(o)(8)(A)(iii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to *HOTMA_HQS@hud.gov.* This allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP)

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(iii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(iii) will be scored based on the new statutory standard.

Question for Comment

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(iii)?

B. Units Owned by a PHA (HOTMA § 105)

HOTMA amends section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding HUD's current definition at 24 CFR 983.3 for the PBV program and as a PHA-owned unit is described at 24 CFR 982.352. A unit is now ''owned by a public housing agency'' only if the unit is in a project that is one of the following categories:

(1) Owned by a PHA.

(2) Owned by an entity wholly controlled by the PHA.

(3) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner. A ''controlling interest'' is—

(A) holding 50 percent or more of the stock of any corporation;

(B) having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);

(C) where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA;

(D) holding 50 percent or more of all managing member interests in an LLC;

(E) holding 50 percent or more of all general partner interests in a partnership; or

(F) equivalent levels of control in other organizational structures.

Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA.

In order to be considered a ''PHA-owned'' unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building.

For units that were previously considered to be PHA-owned but are no longer PHA-owned due to this definitional change, the PHA must obtain an opinion from its legal counsel that the project in question falls outside the statutory definition. The PHA must keep the opinion in the PHA's files. Until such time that the opinion letter is obtained, the PBV project remains PHA-owned for purposes of program requirements and HUD monitoring. If an ownership structure changes in the future that removes a project from the definition of PHA-owned, the PHA must obtain and keep the same sort of opinion letter. If an ownership structure changes in a manner that would cause a PBV project to be classified as PHA-owned (*e.g.,* PHA ownership interest is increased to an amount greater than 50 percent), the PHA must identify, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform all of the applicable independent entity responsibilities for the project in compliance with 24 CFR 983.59 and PIH Notice 2015–05 (or subsequent guidance) for PBV and 24 CFR 982.352(b) for HCV tenant-based assistance.

For PBV projects where the PHA has an interest in the project, but such interest does not cause the project to be classified as PHA-owned housing as described above, HUD may review the PHA's rent determination for such projects, including the PHA's methodology of determining rent comparability. HUD intends to issue additional guidance concerning HUD review and monitoring of rent determinations and rent adjustments for PBV projects, including cases in which the PHA has an interest in the PBV project.

Questions for Comment

1. Should the definition of ''controlling interest'' be different?

2. Are there programmatic issues with changing a unit's designation from PHA-owned to not PHA-owned that need to be address by HUD?

3. What, if any, additional oversight and monitoring should HUD undertake for units in which the PHA has ownership interest in order to ensure that all program requirements (including rent reasonableness and housing quality standards) are being met, especially in cases where the PHA responsible for enforcing those standards has a financial interest in the project?

C. Project-Based Vouchers (HOTMA § 106)

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include:

(1) changing the terminology in the statute from ''structure'' to ''project'' where the statute refers to structure instead of project;

(2) changing the PHA HCV program limitation on PBV vouchers from a 20 percent funding limitation to a 20 percent unit limitation calculation and allowing for additional project-basing of vouchers by raising the limit an additional 10 percent for homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use. The statute also excludes certain projects that were previously subject to federally required rent restrictions or were receiving another type of long-term HUD housing subsidy from the program PBV limitation entirely;

(3) changing the income-mixing cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project (the project unit cap), and making changes to the categories of PBV units that are excepted from this project unit cap;

(4) allowing the PHA to provide for an initial PBV contract of up to 20 years and to further extend that term for an additional 20 years;

(5) allowing the PHA to establish a selection preference for families who *qualify* for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan;

(6) allowing the PHA to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and

(7) allowing PHAs to project-base HUD–VASH and FUP vouchers in accordance with statutory and regulatory requirements of the PBV program without additional requirements for approval by HUD.

This notice does not implement all the provisions of section 106 of HOTMA, but only those where HUD believes it is reasonable to do so and does not provide undue burden on PHAs to implement. HUD may provide additional guidance to this notice to ensure effective implementation and elaborate on issues that may need clarification.

Provisions under section 106 of HOTMA that are *not* implemented by this document and that the PHA and owner may not yet implement are as follows:

(1) Entering into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP) (see section 106(a)(4) of HOTMA);

(2) Providing rent adjustments using an operating cost factor (see section 106(a)(6) of HOTMA);

(3) Establishing and utilizing procedures for owner-maintained site-

based waiting lists (see section 106(a)(7) of HOTMA); and

(4) Concering the environmental review requirements for existing housing (see section 106(a)(8) of HOTMA).

1. Changing ''structure'' to ''project'' (§ 106(a)(1) of HOTMA)

This provision amends section 8(o)(13) by replacing the term ''structure'' with the term ''project'' throughout the paragraph. No guidance is needed to make this change. In accordance with the law, this document serves as official notice that this statutory change is effective as of *April 18, 2017.* HUD will issue any needed conforming regulatory changes in the future.

2. Changing the Maximum Amount of PBVs Permitted in the PHA HCV Program (§ 8(o)(13)(B) of 1937 Act).

This section of the document overrides 24 CFR 983.6 of the PBV program regulations.

A. Maximum Amount of PBVs in the PHA's HCV Program

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

Prior to issuing a request for proposals (RFP) (24 CFR 983.51(b)(1)), selecting a project based on a previous competition (24 CFR 983.51(b)(2)), or selecting a project without following a competition process where the PHA has ownership interest and is engaged in improving, developing or replacing a public housing property or site (see section C.7 of this document), the PHA must submit to the local field office all the following information (in lieu of following the requirements of 24 CFR 983.6(d)):

(1) The total number of units authorized under the Consolidated Annual Contributions Contract (ACC) for the PHA (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below). This number of authorized units includes special-purpose vouchers such as HUD–VASH (except as provided in section D below) and Family Unification Program vouchers. The PHA must also identify the number of PBV units that are excluded from total, if applicable.

(2) The total number of units currently committed to PBV (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below.). The number of units ''committed to PBV'' is comprised of the total number of units that are either (a) currently under PBV HAP contract, (b) under an Agreement to Enter into HAP contract (AHAP), or (c) covered by a notice of proposal selection (24 CFR 983.51(d)). The PHA must also identify the number of PBV units that are excluded from the total, if applicable. This number must match the number of PBV units excluded from the baseline units (discussed above).

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

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

B. Additional Project-Based Units

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

(1) The units are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), and contained in the Continuum of Care Interim Rule at 24 CFR 578.3. See *https://www.federalregister.gov/d/2012-17546* and *https://www.federalregister.gov/d/2016-13684.*

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

(3) The units provide supportive housing to persons with disabilities or to elderly persons. The definitions of a person with disabilities and an elderly person are found at 24 CFR 5.403. Supportive housing means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such services may include (but are not limited to):

(A) meal service adequate to meet nutritional need,

(B) housekeeping aid,

(C) personal assistance,

(D) transportation services;

(E) health-related services;

(F) educational and employment services: or

(G) other services designed to help the recipient live in the community as independently as possible.

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

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

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

These categories are those under which a PHA is permitted to project-base an additional 10 percent of its units above the normally applicable 20 percent PBV program limitation. These categories are separate and distinct from exceptions to the income-mixing requirements that limit the number and percentage of units within a particular

project to which PBV assistance may be attached (no more than the greater of 25 units or 25 percent of the units), which is discussed later in this document.

If a PHA wishes to add PBV units under this exception authority, the PHA must submit the same information in section C.2.A above to the Field Office, and identify the exception category (or categories) for which the PHA will project-base additional units (up to an additional 10 percent above the normally applicable PBV program limitation) and the specific number of units that qualify under the exception category.

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

C. Units Not Subject to PBV Program Unit Limitation

New language in section 8(o)(13)(B) provides that units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation when PBV assistance is attached to them.

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

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice; and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project based on a prior competition or without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception. (The statute provides that the units must have been receiving ''other'' project-based assistance provided by the Secretary in order to cover by the exception authority.)

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

(2) *PBV New Construction Units that Qualify for the Exception as Replacement Housing.* For purposes of this notice, a PBV new construction unit must meet all of the following requirements in order to be a replacement unit and qualify for this exception to the program limitation:

(a) The unit which the PBV new construction unit is replacing (*i.e.,* the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as a majority of the replacement units are built back on the site of the original public housing development and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

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

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

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

HUD is specifically seeking comment on what changes HUD should consider making to the initial conditions set forth under this notice in order for a PBV new construction unit to qualify as replacement housing and the exception to the PBV program limitation. Please see the questions for comment section, below.

(3) *Unit size configuration and number of units for new construction and rehabilitation projects.* The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the program limitation exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the program limitation in this example would be 40 units, and the remaining 10 PBV units in the project would count against the program limitation.

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

(4) *Applicability of PBV project selection requirements.* For owner proposals involving all of these PBV

properties (existing, rehabilitation, and new construction), the standard criteria for selection of projects and the units to which project-based assistance can be attached, including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements, are still in effect. Likewise, the requirements of HUD Notice PIH 2013–27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remains in effect. The only difference is that the PBV units in these projects will not be included in determining if a PHA has exceeded its PBV program cap. These units are excluded from both the total number of units authorized under the PHA's ACC and the number of units committed to PBV in the program.

As noted above, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units (*i.e.,* identify the property and the covered program or programs under which the property was formerly assisted). The PHA submits the required information electronically to the HUD field office by sending an email to *pbvsubmission@hud.gov.* The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

D. Other Units Not Subject to the PBV Program Unit Calculation

In addition to the units listed under section C.2.C above, other units are not subject to the program limitation calculation and would be excluded in the total number of authorize units and the total number of PBV units currently committed to PBV that the PHA submits to the field office (in lieu of following the requirements of 24 CFR 983.6(b)).

(1) *RAD exception.* HUD waived the 20 percent limitation at section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6 for PBV units under the RAD demonstration. This waiver remains in effect, and, consequently, a PHA that continues to be exempted from submitting information on its PBV cap calculation to HUD when it is project-basing vouchers under RAD. Furthermore, RAD PBV units are excluded from both the total number of units under the ACC and the units committed to PBV when determining if the PHA has vouchers available to project-base under the program limit requirements.

(2) *HUD–VASH PBV Set-aside vouchers.* HUD has awarded vouchers specifically designated for project-based assistance out of the HUD–VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these voucher allocations were specifically allocated for project-based assistance, HUD has determined that the PBV units supported by those vouchers should not count against the PHA's PBV program unit limitation as long as those vouchers remain under PBV HAP contract at the designated project. The Appropriations Acts funding these vouchers authorize the HUD Secretary, in consultation with the VA Secretary, to waive or specify alternative requirements for any provision of any statute or regulation that the HUD Secretary administers in connection with the use of those HUD–VASH funds (except for requirements related to fair housing, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance. Accordingly, section 8(o)(13)(B) is waived for those HUD–VASH PBV vouchers.

This exception only applies to HUD–VASH PBV vouchers that were awarded to the PHA through the HUD–VASH PBV set-aside funding process. All other HUD–VASH vouchers, including those HUD–VASH vouchers that the PHA opts to project-base, are still subject to the PHA PBV program limitation, and would be included in the units authorized and units committed to PBV that the PHA submits to HUD under this document, which replaces the voucher funding information that was previously provided under 24 CFR 983.6(b).

(3) *Additional categories established by HUD by regulation.* Section 8(o)(B)(ii), as amended by HOTMA, further provides that the Secretary may, by regulation, establish additional categories for the exception to the PBV program unit limitation. HUD has not yet exercised this authority but may do so in the future.

For future PBV projects other than RAD, the PHA is required to provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. The PHA submits the required information electronically to the HUD field office by sending an email to *pbvsubmission@hud.gov.* The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

Questions for Comment

1. Should HUD allow PHAs that are administering PBV units that would qualify under the additional 10 percent exception categories but were placed under HAP contract prior to the effective date of this notice count those units as excepted? This would potentially allow a PHA that was at the 20 percent limit to add new PBV units that do not fall under any of the exception categories, because counting the PBV units that were already under HAP under the new 10 percent exception authority would free up space under the regular 20 percent cap.

2. The new (o)(13)(B) further provides that the additional 10 percent exception may be applied to units that are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less. This document, for now, only applies the statutory exception provision to those units located in census tracts with poverty rates of 20 percent or less. What criteria should HUD use to define or determine the areas where vouchers are ''difficult to use'' for this exception category?

3. The statute allows the Secretary to issue regulations to create additional exception categories from the normally applicable PBV program limit, which could apply to the additional 10 percent authority or that could be exempted from the program limit entirely. What additional exception categories that should be included in the 10 percent authority? What other types of units should be exempted from the PBV program limit entirely?

4. This document sets out certain conditions that a PBV new construction unit must meet in order to be considered replacement housing and eligible for the exception to the PHA PBV program limitation. Are those conditions appropriate or should they be changed or expanded?

5. In light of the impact that additional exceptions and exemptions from the program limit will have on the number of vouchers available for tenant-based assistance under the HCV program, should HUD establish additional categories at all? What limits or requirements on project-basing, if any, should be placed on the use of this exception authority to ensure that the PHA has sufficient tenant-based assistance available for families to exercise their statutory right to move

from the PBV project with tenant-based assistance after one year of occupancy at the PBV project?

3. Changes to Income-Mixing Requirements for a Project (Project Cap) (§ 8(o)(13)(D) of 1937 Act)

This section overrides the PBV program regulations at 24 CFR 983.56(a) and 983.56(b)(1) and (2). This section also overrides §§ 983.262(c) and (d).

A. PBV Income-Mixing Project Cap, Generally

HOTMA amended the income-mixing requirement for an individual project found in section 8(o)(13)(D) of the 1937 Act. The limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. However, owners under current HAP contracts are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements. For example, if an owner has a PBV HAP contract for a 20 unit project, and the HAP contract provides that 15 of those units were exempted from the 25 percent income mixing requirement because the units are designated for elderly families, the owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.

Except as provided below, the PBV HAP contract may not include units in excess of the greater of 25 units or 25 percent of the units in the project.

B. Exceptions to Project Cap

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

(1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).

(2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit). Families eligible for supportive services under this exception to the project cap would include families with a household member with a disability, among other populations. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.

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

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

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

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

C. Grandfathering of Certain Properties

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

D. Projects Not Subject to a Project Cap

New language in section 8(o)(13)(D) exempts certain types of units receiving project-based voucher assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. This exception to the project cap may only be applied to projects that were not already under HAP contract on the effective date of this document. The exception may not be applied retroactively to projects under HAP contract on the effective date of this notice or subsequently applied at the extension of those HAP contracts.

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

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice, and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the moderate rehabilitation program, including the SRO program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (section 236(f)(2) of the National Housing Act); or

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

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

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

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

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

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

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

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

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

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

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

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

Questions for Comment

1. What other standards should HUD require for supportive services under B.2, above?

2. The Secretary has authority to define areas where tenant-based vouchers are ''difficult to use.'' This document, for now, only applies the statutory provision of census tracts with poverty rates of 20 percent or less. What are some other criteria that HUD should include? For example, other possible criteria include rental vacancy rates, voucher success rates, high cost areas as captured by the difference between the zip code level small area FMR and the metropolitan-wide FMR, or alternative measures of low-poverty areas.

3. Are there additional properties formerly subject to federal rent restrictions or receiving rental assistance from HUD that should be exempted from a project cap?

4. The statute allows HUD to impose additional monitoring and requirements on projects that project-base assistance for more than 40 percent of the units. How can PHAs ensure that this increase in PBV units will not hamper mobility efforts and moves to opportunity areas?

4. PBV Contract Terms (§ 8(o)(13)(F) and (G) of 1937 Act and §§ 106(a)(4) and (5) of HOTMA)

A. Initial Term of HAP Contract and Extension of Term

The initial HAP Contract term may now be of a period of up to 20 years (instead of the prior 15-year limitation). The length of the term of the initial HAP contract for any HAP contract unit may not be less than one year nor more than 20 years (instead of the prior 15-year limitation on the initial term of the HAP contract). In addition, the PHA may agree to enter into an extension (at the time of the initial HAP contract execution or any time before the expiration of the contract, for an additional term of up to 20 years (as opposed to the prior 15-year limitation on the term of the contract extension). A HAP contract extension may not exceed 20 years. The PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively.

PHAs and owners with HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extension) would be 40 years. PHAs and owners with HAP contracts that are no longer in the initial term may mutually agree to extend the HAP contract for a total extension term of 20 years. The maximum term of the HAP contract in that case would be 20 years plus the number of years that constituted the initial term of the HAP contract.

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

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

B. Priority of Assistance Contracts

The new section 8(o)(13)(F)(i)(I) requires PHAs, in times of insufficient funding, to first take all cost-savings measures prior to failing to make payments under existing PBV HAP contracts (*i.e.,* terminating the HAP contract). If the PHA has taken all cost-savings measures and still has insufficient funding to make HAPs, it is left up to the discretion of the PHA to choose to terminate HCV or PBV assistance first. The list of cost-savings measures that must be taken prior to terminating assistance contracts are found in PIH Notice 2011–28.[1]

C. Biennial Inspection Requirements

The new language in section 8(o)(13)(F)(i)(II) of the 1937 Act is a change that clarifies the frequency of inspection requirement for PBV projects to those found in paragraph (8), which allows for biennial as opposed to annual inspections. The language in paragraph (13)(F)(i)(II) merely clarifies that for PBV assistance, biennial inspections may be conducted using a sample of units. The PBV regulations at 24 CFR 983.103 were revised under the final rule entitled, ''Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,'' published in the **Federal Register** on March 8, 2016, at 81 FR 12353. This rule amended regulations to reflect the biennial inspection requirement for PBV and that a random sampling of at least 20 percent of the PBV units in each building may be used to fulfill that biennial inspection requirement.

D. Additional Units Without Competition

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

E. Additional Contract Conditions

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

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

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

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

Question for Comment

Are there additional parameters HUD should consider placing on PHAs and owners when amending HAP contract terms related to continuation, termination or expiration?

5. Preference for Families Who Qualify for Voluntary Services (§ 8(o)(13)(J) of 1937 Act)

Section 106(a)(7)(A) and (C) of HOTMA makes changes to section 8(o)(13)(J) of the 1937 Act to allow a PHA to allow owners with PBV contracts to create and maintain site-based waiting lists. HUD is not implementing these provisions at this time, but instead will pursue rulemaking.

However, section 106(a)(7)(B) of HOTMA provides that a PHA may establish a selection preference for families who qualify for voluntary

services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. This is a change from the current regulatory requirement at 24 CFR 983.251(d), that provides in selecting families, PHAs may give preference to disabled families who need the services offered at a particular project in accordance with the limits under the regulatory paragraph, regardless of whether the family qualifies for the supportive service and will actually be able to receive the supportive services. Note, however, that the prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. This document provides PHAs with additional guidance and information on how to establish such preferences.

A. Selection Preference for Families Who Qualify for Voluntary Services

(1) Consistency With Nondiscrimination and Civil Rights Statutes and Requirements

Both the owner and the PHA are responsible for ensuring that the proposed preference is consistent with all applicable Federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and HUD's Equal Access Rule. See 24 CFR 5.105(a). It is also the responsibility of the PHA to ensure that an owner is carrying out the PHA's program in a manner consistent with Section 504. There are unique requirements regarding the selection preference when considered in the context of providing services for individuals with disabilities. In particular, the statutory language permitting a preference for individuals who qualify for voluntary services, including disability-specific services, must be read consistent with Federal laws that provide protections against discrimination based on disability and segregation of individuals with disabilities as well as the affirmative requirement that programs, services, and activities be provided in the most integrated setting appropriate to the needs of individuals with disabilities. Among these requirements, PHAs and owners, and in certain circumstances services providers, may not impose eligibility criteria that discriminate on the basis of disability, and must comply with the integration mandate.

The HOTMA amendments permit a PHA to establish a preference based on who qualifies for voluntary services, including disability-related services, offered in conjunction with the assisted units. Consistent with Federal nondiscrimination laws, qualifications or eligibility criteria, including for voluntary services, cannot be applied in a discriminatory manner. In particular, PHAs, owners, and service providers cannot impose additional admissions criteria that discriminate or are applied in a discriminatory manner. Any individual who is qualified for the services must be able to receive the preference, including qualified individuals with disabilities, regardless of disability type.

Voluntary services can consist of a variety of activities, including for example, meal service adequate to meet nutritional needs, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, and other services designed to help the recipient live in the community as independently as possible. Voluntary services can also include disability-specific services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided to support a person with a disability. Such services may also include, for example, services provided by State Medicaid programs to promote community based settings for individuals with disabilities.

The revised statute permits such a preference to be established if it is consistent with the PHA plan. As part of the PHA plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA plan and all applicable federal fair housing and civil rights requirements. In developing any proposed targeted preferences, PHAs must comply with the requirements outlined in PIH Notice 2012–31 and HUD's *Statement on the Role of Housing in Accomplishing the Goals of Olmstead.*

(2) Preferences for Disability-Specific Services

A PHA or owner may offer a preference for individuals who qualify for voluntary services offered in connection with the units. Such services may or may not include disability-specific services. For example, a preference may be only for persons who qualify for employment assistance, or for transportation services, or a preference may be for persons who qualify for either housekeeping assistance, case management, or outpatient health services. If a PHA or owner decides, however, that the only preference that will be offered is based on qualification for a disability-specific service, it is especially important for the entity to consider how to implement this preference consistent with Section 504 and the ADA, and their implementing regulations.

Further, the statutory language allowing an agency or owner to give preference to families who qualify for voluntary services, including disability-specific services, must be implemented consistent with the integration mandate under Section 504 and Title II of the ADA. 24 CFR 8.4(d); 28 CFR 35.130(d). The integration mandate, as mentioned earlier in the notice, requires that covered entities ensure persons with disabilities can interact with persons without disabilities to the fullest extent possible. HUD has provided guidance on what the Department considers integrated settings in the housing context:

''Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.'' [2]

By contrast, HUD has stated that segregated settings are ''occupied exclusively or primarily by individuals with disabilities.'' [3]

[2] Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead, *http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.*

[3] The U.S. Department of Justice provides additional relevant guidance on the application of the integration mandate under Title II and Section 504 in its Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C., *https://www.ada.gov/olmstead/*

In addition, requirements under the Fair Housing Act, including the regulatory obligation under 24 CFR 100.70(c)(4) regarding dispersion of units occupied by individuals with disabilities and not assigning individuals with disabilities to a particular section or floor of a building, continue to apply.

As more states implement requirements under Title II of the ADA and *Olmstead,* which are focused on transitioning individuals from institutional and other segregated settings into integrated community-based settings, as well as assisting individuals at risk of institutionalization from entering such settings, there is an increased need for affordable, integrated, and accessible housing opportunities. To assist with these concerns, PHAs or owners may want to coordinate with other relevant agencies implementing *Olmstead* planning and transition planning related to the Centers for Medicare and Medicaid Services (CMS)' Home and Community-Based Setting (HCBS) regulation in their State. HUD encourages the PHA or owner to consult with the relevant agencies who make determinations as to whether the housing qualifies as a HCBS under the CMS regulations to allow for State Medicaid funding to be accessed at the site. The CMS regulations specify the qualities that HCBS must have in order to receive funding, including that the setting is integrated.

B. Informed Client Choice and Self-Determination

HUD emphasizes the importance of client choice, independence, and self-determination in implementing this provision. Consistent with the statutory language, as well as federal fair housing and civil rights requirements, participation in services is voluntary. Accordingly, the existing regulatory language at 24 CFR 982.251(d)(2) stating that residents with disabilities shall not be required to accept the particular services at the project continues to apply. Program beneficiaries who receive housing because of the preference still have the ability to receive voluntary services from a service provider of their choosing, or choose not to participate in services at all. Similarly, an individual who chooses to no longer participate in a service or who no longer qualifies for services he or she did qualify for at the time of initial occupancy cannot subsequently be denied a continued housing opportunity because of this changed circumstance. A PHA or owner also cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs

C. Additional Requirements

- PHAs and project owners must also ensure that their programs are operated in a manner to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. 3608, and related authorities, such as the Affirmatively Furthering Fair Housing Rule, 24 CFR 5.150 *et seq.*
- Housing providers cannot use a preference to impose additional criteria that intentionally discriminates against members of any protected class or may result in a discriminatory effect. For recent HUD guidance on discriminatory effects under the Fair Housing Act, see Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, *https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf;* Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, *http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf.*
- PHAs and owners must also ensure their implementation of preferences and other operations comply with other Federal nondiscrimination requirements. This includes, among other requirements, providing reasonable accommodations for persons with disabilities, auxiliary aids and services necessary to ensure effective communication with individuals with disabilities, which includes ensuring that information is provided in appropriate accessible formats as needed, *e.g.,* Braille, audio, large type, accessible web-based applications, assistive listening devices, and sign language interpreters, and taking reasonable steps to maximize the utilization of accessible units (units accessible to persons with mobility impairments and units accessible to persons with hearing or vision impairments) by eligible individuals who need the accessibility features of the particular unit. For additional guidance on permissible PHA preferences, please see the *Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of Olmstead, http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf,* and PIH Notice 2012–31, *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-31.pdf.* In addition, HUD anticipates issuing additional guidance on the application of HOTMA, including fair housing guidance.

6. Attaching PBVs to Structures Owned by PHAs (§ 8(o)(13)(N) of 1937 Act)

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

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

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

Questions for Comment

1. Is the $25,000 per unit threshold appropriate for this exception from the competitive process? HUD chose the $25,000 threshold based on the findings of the 2010 Capital Needs study on the average existing capital need per public housing unit, but is seeking public comment on other possible dollar thresholds or methodologies for determining whether a PHA's rehabilitation or construction projects qualifies as an initiative to improve, develop, or replace a public housing property or site.

2. The law provides that this section is applicable to a PHA that has an ownership interest in or has control of the project. Are there examples or cases where a PHA may have control of a project but would not have any ownership interest in the project that HUD should address in future implementing guidance or when

q&a_olmstead.htm and its Olmstead compliance and enforcement efforts, *https://www.ada.gov/olmstead/index.htm.*

conforming the regulation to these provisions?

7. Project-Basing Special-Purpose Vouchers (§ 8(o)(13)(O) of 1937 Act)

HOTMA added a new section 8(o)(13)(O) to the 1937 Act, allowing PHAs to project-base Family Unification Program (FUP) and HUD–VASH vouchers without requiring additional HUD approval. This document serves as official notice that this statutory change is effective as of *April 18, 2017.* This document also provides additional information on how PHAs may project-base HUD–VASH or FUP vouchers.

All normally applicable PBV requirements under 24 CFR part 983 or implemented through this document apply to project-based FUP and HUD–VASH vouchers, and PHAs must continue to meet all of their obligations to assist the required number of HUD–VASH and FUP families for their HCV programs.

A. HUD–VASH Vouchers

The most current requirements for the HUD–VASH program may be found in PIH Notice 2015–10. In that notice, HUD requires that PHAs wishing to project-base HUD–VASH vouchers must meet certain requirements in order to do so. Those PBV requirements are now superseded by the statutory amendments made by HOTMA.

However, statutory authorization for the HUD–VASH program, including section 8(o)(19) of the 1937 Act and the FY 2016 appropriations Act,[4] requires that PHAs conduct their HUD–VASH programs in conjunction with a Veterans Administration Medical Center (VAMC), which must make supportive services available to individuals receiving HUD–VASH assistance. Therefore, in order to meet the requirement that the PHA provide rental assistance in conjunction with a VAMC's ability to provide supportive services, PHAs wishing to project-base HUD–VASH vouchers must consult with their partner VAMC to ensure that the VAMC will be able to continue to provide supportive services should the PHA project-base its HUD–VASH vouchers. Furthermore, PHAs that received HUD–VASH PBV set-aside funds must continue to comply with all of the terms and conditions that apply to those vouchers.

B. Family Unification Program (FUP) Vouchers

HOTMA also allows PHAs to project-base vouchers awarded to the PHA for the FUP program without further approval from HUD. However, HUD encourages PHAs wishing to do so to consider whether project-basing such vouchers yields significant benefits, whether doing so would limit the ability of youth to use such vouchers, and whether project-basing FUP vouchers would allow the PHA to serve the populations eligible for FUP vouchers in such a way as to keep the units filled. A PHA project-basing FUP vouchers may limit the project-based vouchers to one category of FUP eligible families, such as making the project-based vouchers exclusively available for FUP-youth.

Questions for Comment

1. Is there an advantage to grouping FUP families (either FUP families, FUP youth, or all FUP families) in one project (as opposed to interspersed with other PBV units in a PHA's portfolio)?

2. How would the PHA administer waitlists and preferences to manage FUP availability across multiple waitlists?

3. How do PHAs ensure mobility access with a time-limited voucher (*i.e.,* FUP voucher that is assisting a FUP-eligible youth)?

4. How do PHAs ensure full occupancy of PBV units with time-limited vouchers and limited numbers?

D. Using Vouchers in Manufactured Housing (HOTMA § 112)

Section 112 of HOTMA amends section 8(o)(12) of the 1937 Act with respect to the use of voucher assistance provided to families that are owners of manufactured housing. Prior to the HOTMA amendment, voucher assistance payments on behalf of owners of manufactured housing under section 8(o)(12) could only be made to assist the manufactured home owner with the rent for the space on which the manufactured home is located (the manufactured home space). Section 112 expanded the definition of ''rent'' for manufactured home owners receiving voucher assistance to also include other housing expenses, specifically the monthly payments made by the family to amortize the cost of purchasing the manufactured home (including any required insurance and property taxes) and tenant-paid utilities.

The use of housing assistance payments to assist a manufactured home owner with the rent of the manufactured home space and other eligible expenses continues to be a special housing type under 24 CFR part 982 subpart M. In general, the PHA is not required to permit families to use any of the special housing types and may limit the number of families using special housing types. However, the PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

For manufactured home owners that are currently receiving HCV assistance to rent the manufactured home space in accordance with 24 CFR 982.622 through 982.624, the PHA must implement the HOTMA changes to the calculation of ''rent'' and the amount of subsidy effective on the first regular reexamination following the effective date of this document, or no later than one year after the effective date of this document (if the first regular examination falls after that date). The new subsidy calculation shall apply from that point on during the term of the HAP contract.

24 CFR 982.622 and 982.624 continue to apply for HCV assistance provided on behalf of a manufactured home owner that is renting the manufactured home space. Section 982.623, which covers how the housing assistance payment is calculated, is no longer applicable. Instead, if a PHA chooses to provide voucher assistance to a manufactured home owner who is renting the manufactured home space, the monthly housing assistance payment is calculated as the lower of:

(a) The PHA payment standard minus the total tenant payment; or

(b) The rent of the manufactured home space (including other eligible housing expenses) minus the total tenant payment.

The PHA payment standard is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. The payment standard for the family is the lower of the payment standard amount for the family unit size or the payment standard amount for the size (number of bedrooms) of the manufactured home. The separate fair market rent (FMR) for a manufactured home space is no longer applicable to establishing the payment standard for a manufactured homeowner who is renting the manufactured home space since the payment is assisting the homeowner with other housing expenses. The PHA payment standard will be based on the applicable HUD published FMR for the area in which the manufactured home space is located.

The rent of the manufactured home space (including other eligible housing expenses) is the total of:

(a) The rent charged for the manufactured home space;

[4] Division L, Title II of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, approved December 18, 2015).

(b) owner maintenance and management charges for the space;

(c) the monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and

(d) the applicable allowances for tenant paid utilities.

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

The total amount for the rent of the manufactured home space and the other eligible expenses is reported in PIC on the HUD–50058 on line 12k, even though it includes amounts in addition to the total monthly rent payable to the owner under the lease for the contract unit.

The utility allowances are the applicable utility allowances from the PHA utility allowance schedule under 24 CFR 982.517 and 982.624.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender or utility company.

HOTMA further provides that the PHA may choose to make a single payment to the family for the entire monthly assistance amount rather than making the HAP directly to the owner of the manufactured home space the family is renting. HUD is not implementing this option at this time but is seeking comment on how to best implement this option, including how to best ensure the PHA may still take enforcement action when necessary against an owner who fails to fulfill his or her responsibilities under the HCV program.

Question for Comment

When implementing the option to allow the PHA to make a single HAP directly to the family, how would HUD ensure that a PHA take enforcement action against an owner of a manufactured home space who fails to fulfill his or her responsibilities under the HCV program? Would a manufactured home park owner be willing to enter into a contract under which he or she would receive no direct payment?

III. Environmental Impact Certification

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on *www.regulations.gov.*

Dated: January 10, 2017.

Nani Coloretti,

Deputy Secretary.

[FR Doc. 2017–00911 Filed 1–17–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR 30

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Proposed Membership of the Bureau of Indian Education Accountability Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed membership of negotiated rulemaking committee; request for nominations; and request for comments.

SUMMARY: The Secretary of the Interior has selected proposed members to form the Bureau of Indian Education (BIE) Accountability Negotiated Rulemaking Committee (Committee) which will recommend revisions to the existing regulations to implement the Secretary's responsibility to define the standards, assessments, and accountability system for Bureau-funded schools, as required by the Every Student Succeeds Act (ESSA). Representatives were nominated by Tribes whose students attend Bureau-funded schools. After considering nominations, the Secretary proposes to appoint the persons named in this notice as Tribal Committee members. Tribes, Tribal organizations, and individual Tribal members may submit comments on the proposed Tribal Committee membership, apply for Tribal membership on the Committee, or submit other nominations for Tribal membership on the Committee. The Secretary also proposes to appoint Federal representatives to the Committee as listed.

DATES: Comments on the proposed Tribal members of this Committee must be submitted no later than February 17, 2017.

ADDRESSES: Send comments and nominations to the Designated Federal Official: Sue Bement, Education Program Specialist, Bureau of Indian Education, C/O Office of Regulatory Affairs and Collaborative Action, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104. Or email at: *BIEcomments@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Sue Bement, Designated Federal Official; email *BIEcomments@bia.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of the BIE Committee is to serve as an advisory committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) in a manner that:

(1) Reflects the unique government-to-government relationship between American Indian Tribes and the United States;

(2) Ensures that the membership of the Committee includes only representatives of the Federal Government and Tribes; and

(3) To the extent possible, allots Tribal representation based upon the Tribes' proportionate share of the total enrollment in Bureau-funded schools.

The Secretary has determined that the proper functioning of the Committee requires that the Committee be limited to no more than the 25 members recommended by the NRA (5 U.S.C. 565). The Secretary has selected 19 Tribal representatives and 6 Federal representatives for the Committee, for a proposed total of 25 members.

The Secretary finds that the proposed Tribal representatives for the Committee:

(1) Represent a balance of interests that will be significantly affected by the final rules (*i.e.,* parents; teachers; school board members; and administrators of Tribal and Tribally operated contract day schools, grant day schools, grant boarding schools, and peripheral dormitories);

(2) Proportionately represent students from Tribes served by Bureau-funded schools;

(3) Reflect the different varieties of school size, type of school and facility, and geographical location; and

3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: April 28, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–9993 Filed 5–5–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5213–N–01]

Section 8 Housing Choice Vouchers: Implementation of the HUD–VA Supportive Housing Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice.

SUMMARY: This Notice sets forth the policies and procedures for the administration of tenant-based Section 8 Housing Choice Voucher (HCV) rental assistance under the HUD–Veterans Affairs Supportive Housing (HUD–VASH) program administered by local public housing agencies (PHAs) that have partnered with local Veterans Affairs (VA) medical centers.

DATES: Effective date: May 6, 2008.

FOR FURTHER INFORMATION CONTACT: David A. Vargas, Director, Office of Housing Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228, Washington, DC, 20410, telephone number (202) 708–2815. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background
II. Special Rules for the HUD–VASH Voucher Program
  a. Family Eligibility and Selection
  b. Income Eligibility
  c. Initial Term of the HCV
  d. Initial Lease Term
  e. Ineligible Housing
  f. Mobility and Portability of HUD–VASH Vouchers
  g. Case Management Requirements
  h. Turnover of HUD–VASH Vouchers
  i. Moving-to-Work (MTW) Agencies
  j. Project-based Assistance
  k. Section Eight Management Assessment Program (SEMAP)
III. Reporting Requirements

I. Background

Seventy-five million dollars in Housing Choice Voucher (HCV) program funding will provide rental assistance under a supportive housing program for homeless veterans authorized by section 8(o)(19) of the United States Housing Act of 1937, 42 U.S.C. 1437f(o)(19). The initiative is known as the HUD–VASH program and was authorized pursuant to Division K, Title II, of The Consolidated Appropriations Act, 2008 (Pub. L. 110–161) (''2008 Appropriation Act'') enacted on December 26, 2007 (see proviso (7) under the heading ''Tenant-Based Rental Assistance''). The HUD–VASH program combines HUD HCV rental assistance for homeless veterans with case management and clinical services provided by the Department of Veterans Affairs (VA) at its medical centers and in the community. Ongoing VA case management, health, and other supportive services will be made available to homeless veterans at as many as 132 VA Medical Center (VAMC) supportive services sites across the nation.

The 2008 Appropriation Act required HUD to ''make such funding available, notwithstanding section 204 (competition provision) of this title, to public housing agencies (PHAs) that partner with eligible VA Medical Centers or other entities as designated by the Secretary of the Department of Veterans Affairs, based on geographical need for such assistance as identified by the Secretary of the Department of Veterans Affairs, public housing agency administrative performance, and other factors as specified by the Secretary of Housing and Urban Development in consultation with the Secretary of the Department of Veterans Affairs.''

Based on this language, the VA, in consultation with HUD, identified 132 VAMCs that will participate with the program. In doing so, the VA took into account the population of homeless veterans needing services in the area, the number of homeless veterans served by the homeless programs at each VAMC during Fiscal Years 2006 and FY 2007, geographic distribution, and VA case management resources. There will be at least one site in each of the 50 states and in the District of Columbia and Puerto Rico.

HUD, in consultation with the VA, and in consideration of a PHA's administrative performance, identified eligible PHAs located in the jurisdiction of the VAMCs and invited them to apply for HUD–VASH vouchers. The number of HUD–VASH vouchers awarded to each PHA was determined by HUD and the VA. Approximately 35 rental vouchers were awarded for each professional, full-time HUD–VASH case manager at the local VAMC. HUD–VASH vouchers may be reallocated in the future based on need and usage. A PHA that participates in the HUD–VASH program must partner with their VASH VAMC. Additional information on program requirements and procedures may be found on HUD's Web site at *www.HUD.gov.*

II. Special Rules for the HUD–VASH Voucher Program

This section sets forth the design features of the HUD–VASH vouchers, including the eligibility of families, portability, case management, and the turnover of these vouchers. The 2008 Appropriation Act states ''that the Secretary of Housing and Urban Development may waive, or specify alternative requirements for (in consultation with the Secretary of the Department of Veterans Affairs), any provision of any statute or regulation that the Secretary of Housing and Urban Development administers in connection with the use of funds made available under this paragraph (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance: *Provided further,* That assistance made available under this paragraph shall continue to remain available for homeless veterans upon turnover.''

This notice outlines, below, the waivers or alternative requirements determined by the Secretary to be necessary for the effective delivery and administration of the HUD–VASH program. These waivers or alternative requirements are exceptions to the normal HCV requirements, which otherwise govern the provision of HUD–VASH assistance. In addition, a PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program. These requests may be submitted to the Secretary for review and decision through the Assistant Secretary for Public and Indian Housing.

HUD–VASH vouchers under this part are administered in accordance with the HCV tenant-based rental assistance regulations set forth at 24 CFR part 982. In the HCV program, the PHA pays monthly rental subsidies so that eligible families can afford decent, safe, and sanitary housing. HUD provides housing assistance funds to the PHA, as well as funds for PHA administration of the program.

Under the HCV tenant-based program, families select and rent units that meet program housing-quality standards. If the PHA approves a family's unit and tenancy, the PHA contracts with the owner to make rent subsidy payments (housing assistance payments) directly

to the owner on behalf of the family on a monthly basis. The family enters into a lease with the owner and pays its share of the rent to the owner in accordance with the lease. The housing assistance payment (HAP) contract between the PHA and the owner covers only a single unit and a specific assisted family. If the family moves out of the leased unit, the HAP contract with the owner terminates. The family may generally move to another unit with continued assistance so long as the family is complying with program requirements.

Unless expressly noted below, all regulatory requirements and HUD directives regarding the HCV tenant-based program are applicable to HUD–VASH vouchers, including the use of all HUD-required contracts and other forms. The PHA's local discretionary policies adopted in the PHA's written administrative plan apply to HUD–VASH vouchers, unless such local policy conflicts with the requirements of the HUD–VASH vouchers outlined below.

PHAs are required to maintain records that allow for the easy identification of families receiving HUD–VASH vouchers. PHAs must identify these families in the Public and Indian Housing Information Center (PIC). This record-keeping will help ensure that, in accordance with appropriations renewal language, HUD–VASH vouchers that are in use will remain available for homeless veterans upon turnover.

a. Family Eligibility and Selection

HUD–VASH eligible families are homeless veterans. The 2008 Appropriation Act provides for statutory or regulatory waivers or alternative requirements upon a finding by the Secretary that such waivers or alternatives are necessary for the effective administration and delivery of voucher assistance. The December 17, 2007, Explanatory Statement for the 2008 Appropriation Act provides, ''The Appropriations Committees expect that these vouchers will be made available to all homeless veterans, including recently returning veterans' (153 Cong. Rec. H16514 (daily ed., Dec. 17, 2007)). HUD, through its undersigned Secretary, finds the following waivers necessary to effectively administer and deliver the program to all veterans in accordance with Congressional intent.

Section 8(o)(19) of the United States Housing Act of 1937 (USHA of 1937), which requires homeless veterans to have chronic mental illnesses or chronic substance use disorders with required treatment of these disorders as a condition of receipt of HUD–VASH assistance, is waived.

The VAMC will refer HUD–VASH eligible families to the PHA for the issuance of vouchers. Written documentation of these referrals must be maintained in the tenant file at the PHA. Therefore, the PHA will not have the authority to maintain a waiting list or apply local preferences for HUD–VASH vouchers. Accordingly, section 8(o)(6)(A) of the USHA of 1937, 42 U.S.C. 1437f(o)(6)(A), in regard to preferences, has been waived to provide for the effective administration of the program. In addition, 24 CFR 982.202, 982.204, and 982.207, relating to applicant selection from the waiting list and local preferences, are also waived. Sections 982.203, 982.205, and 982.206 regarding special admissions, cross-listing of the waiting list, and opening and closing the waiting list do not apply to the HUD–VASH program.

The VAMC will screen all families in accordance with its screening criteria. By agreeing to administer the HUD–VASH program, the PHA is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies. Specifically, under the HUD–VASH program, PHAs will not have the authority to screen potentially eligible families or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), with one exception. PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, the Department is exercising its authority to waive 42 U.S.C. 1437d(s); 42 U.S.C. 13661(a), (b), and (c); and 24 CFR Sections 982.552 and 982.553, with the exception of 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders.

Civil rights requirements cannot be waived. The HUD–VASH program is administered in accordance with applicable Fair Housing requirements. These requirements prohibit discrimination on the basis of race, color, religion, sex, familial status, national origin, or disability. When disabled veterans are HUD–VASH recipients, HUD's reasonable accommodation standards apply.

b. Income Eligibility

The PHA must determine income eligibility for HUD–VASH families in accordance with 24 CFR 982.201. Income targeting requirements of section 16(b) of the USHA of 1937, as well as 24 CFR 982.201(b)(2), do not apply for HUD–VASH families so that participating PHAs can effectively serve the eligible population specified in the 2008 Appropriation Act; that is, homeless veterans, who may be at a variety of income levels. The PHA may, however, choose to include the admission of extremely low-income HUD–VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

c. Initial Term of the HCV

Recognizing the challenges that HUD–VASH participants may face with their housing search, HUD–VASH vouchers must have an initial search term of at least 120 days. Therefore, § 982.303(a), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days. Any extensions, suspensions, and progress reports will remain under the policies in the PHA's administrative plan, but will apply after the minimum 120-day initial search term.

d. Initial Lease Term

Under the HCV program, voucher participants must enter into an initial lease with the owner for one year, unless a shorter term would improve housing opportunities for the tenant and the shorter term is a prevailing market practice. To provide a greater range of housing opportunities for HUD–VASH voucher holders, initial leases may be less than 12 months; therefore, both section 8(o)(7)(A) of the USHA of 1937, 42 U.S.C. 1437f(o)(7)(A), and 24 CFR 982.309(a)(2)(ii) are waived.

e. Ineligible Housing

HUD–VASH families will be permitted to live on the grounds of a VAMC in units owned by the VA. Therefore, 24 CFR 982.352(a)(5), which prohibits units on the grounds of a medical, mental, or similar public or private institution, is waived for that purpose only.

f. Mobility and Portability of HUD–VASH Vouchers

An eligible family issued a HUD–VASH voucher must receive case management services provided by the VAMC. Therefore, special mobility and portability procedures must be established. HUD–VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by the partnering VAMC. Since the VAMC will be identifying homeless veterans eligible to participate

in the HUD–VASH program, section 8(r)(1)(B)(i) of the USHA of 1937, 42 U.S.C. 1437f(r)(1(B)(i), which restricts portability in cases where the family did not reside in the jurisdiction of the PHA at the time of application for HCV assistance, and 24 CFR 982.353(a), (b), and (c), which affects where a family can lease a unit with HCV assistance, do not apply.

(1) Portability Moves Where Case Management Is Provided by the Initial PHA's Partnering VAMC

If the family initially leases up, or moves, under portability provisions, but the initial PHA's partnering VAMC will still be able to provide the necessary case management services due to its proximity to the partnering VAMC, the receiving PHA must process the move in accordance with the portability procedures of 24 CFR 982.355. However, since the initial PHA must maintain records on all HUD–VASH families receiving case management services from its partnering VAMC, receiving PHAs must bill the initial PHA. Therefore, 24 CFR 982.355(d), which gives the receiving PHA the option to absorb the family into its own HCV program or bill the initial PHA, is not applicable.

When the receiving PHA completes the HUD–50058 under the scenarios above, the action type that must be recorded on line 2a is ''1'' for a new admission (a family that is new to the HCV program) or ''4'' for a portability move-in (a family that was previously leased up in the jurisdiction of the initial PHA). Whether the family is a new admission or portability move-in, in section 12 of the HUD–50058, line 12d is marked ''Y,'' 12e must be 0 since the family must be absorbed, and 12f must be left blank.

g. Case Management Requirements

The VAMC responsibilities include: (1) The screening of homeless veterans to determine whether they meet the HUD–VASH program participation criteria established by the VA national office; (2) providing appropriate treatment and supportive services to potential HUD–VASH program participants, if needed, prior to PHA issuance of rental vouchers; (3) providing housing search assistance to HUD–VASH participants with rental vouchers; (4) identifying the social service and medical needs of HUD–VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout this initiative; and (5) maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

As a condition of HCV rental assistance, a HUD–VASH eligible family must receive the case management services noted above from the VAMC. Therefore, a HUD–VASH participant family's HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such case, and at its option, the PHA may offer the family continued HCV assistance through one of its regular vouchers, to free up the HUD–VASH voucher for another eligible family referred by the VAMC.

h. Turnover of HUD–VASH Vouchers

In accordance with the 2008 Appropriation Act, upon turnover, HUD–VASH vouchers must be issued to eligible families as identified by the VAMC, as noted above.

i. Moving-To-Work (MTW) Agencies

HUD–VASH vouchers must be administered in accordance with this Notice and are not eligible for fungibility under their MTW agreements. HUD–VASH vouchers must be reported on separately from vouchers under the agency's MTW Agreement.

j. Project-Based Assistance

Although HUD–VASH vouchers are tenant-based rental assistance, the Department will consider, on a case-by-case basis, requests from the PHA (with the support of the VAMC) to project-base these vouchers in accordance with 24 CFR part 983.

k. Section Eight Management Assessment Program (SEMAP)

Since leasing of HUD–VASH vouchers will be dependent on referrals from the VAMC, the unit months and budget authority associated with these vouchers will not be included in the SEMAP leasing indicator denominator. Therefore, 24 CFR 985.3(n)(1)(i) and (ii) are waived. However, utilization of these vouchers will be monitored separately through HUD systems.

III. Reporting Requirements

A new code (VASH) has been established for use on line 2n of the Family Report (form HUD–50058), which provides for an indication if the family participates in ''other special programs.'' The information collection requested on HUD–50058 has been approved by the Office of Management and Budget (OMB) and given OMB control number 2577–0083. No person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number. This code must remain on the HUD–50058 for the duration of the HUD–VASH family's participation in the program. The PHA that administers the HUD–VASH voucher on behalf of the family (initial or receiving PHA under portability) must enter and maintain this code on the HUD–50058.

For any additional systems reporting requirements that may be established, HUD will provide further guidance.

Dated: May 1, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. 08–1220 Filed 5–1–08; 4:00 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853-ES; N–82255 and N–84469; 8–08807; TAS: 14X5432]

Notice of Realty Action: Classification/Lease/Conveyance for Recreation and Public Purposes Act of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 8.75 acres of public land in Clark County, Nevada. The St. Matthews Baptist Church proposes to use 5 acres of the land for a church, parking area, adult day care, athletic field, children's play area, landscaping, and related facilities. The Solid Rock Christian Church proposes to use 3.75 acres of the land for a house of worship, community learning/not-for-profit day care center, parking, and related facilities. The proposals by these two churches are distinguished as two distinct actions in this notice.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands until June 20, 2008.



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Part II

Department of Housing and Urban Development

24 CFR Parts 5, 982, and 983
The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 982, and 983

[Docket No. FR–5242–F–02]

RIN 2577–AC83

The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: HERA, enacted into law on July 30, 2008, made comprehensive and significant reforms to several HUD programs, including HUD's Public Housing, Section 8 Tenant-Based Voucher, and Project-Based Voucher programs. On November 24, 2008, HUD published a notice that provided information about the applicability of certain HERA provisions to these programs. The notice identified: those statutory provisions that are self-executing and required no action on the part of HUD for the program changes made by HERA to be implemented; and those statutory provisions that require new regulations or regulatory changes by HUD for the HERA provisions to be implemented. The notice also offered the opportunity for public comment on the guidance provided. HUD followed the November 2008 notice with a May 15, 2012, rule that proposed to establish, in regulation, the reforms made by HERA solely to the Section 8 Tenant-Based Voucher and Project-Based Voucher programs as discussed in the November 2008 notice, to make other related changes to the regulations, and to further solicit public comment. This final rule conforms the regulations of the Section 8 Tenant-Based Voucher and Project-Based Voucher programs to the statutory program changes made by HERA, makes other related changes to these regulations as discussed in the May 2012 proposed rule, and makes further changes to the two voucher program regulations as a result of issues raised by public comment or as a result of further consideration by HUD of issues pertaining to these programs.

DATES: *Effective Date:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Voucher programs, contact Michael Dennis, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4228, telephone number 202–402–3882. The address is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—November 2008 Notice and May 2012 Proposed Rule

HERA (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) made several changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that affect programs administered by HUD's Office of Public and Indian Housing (PIH), including, but not limited to, changes to the definition of income, which also affect the Office of Housing's project-based assistance programs; the public housing agency (PHA) plan; the voucher program; and the capital and operating funds with respect to emergency funds.

November 24, 2008, Notice. HUD published a notice in the **Federal Register** on November 24, 2008, at 73 FR 71037, that provided information about the applicability of the 1937 Act provisions amended by HERA to HUD's Public Housing, Section 8 Tenant-Based Voucher, and Section 8 Project-Based Voucher programs. To assist PHAs and assisted housing providers, the notice identified those provisions that are self-executing and required no action on the part of HUD for the program changes to be implemented, and those provisions that require new regulations or regulatory changes by HUD to be implemented. The notice also solicited public comment.

May 15, 2012, Proposed Rule, Generally. HUD followed the November 24, 2008 notice with a proposed rule published on May 15, 2012, at 77 FR 28742, for the purpose of: (1) Establishing, in regulation, the reforms made by HERA to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs as discussed in the November 2008 notice, taking into consideration public comment received on the notice, and (2) making other related regulatory changes. In the May 15, 2012, proposed rule, HUD explained that whether the HERA program changes are self-executing or not self-executing, a rule is necessary to ensure that the codified regulations for the programs revised by HERA reflect the HERA changes. In some cases, the regulatory change is simply a conforming change; that is, the regulatory revisions conform the language of the regulation to the language of the 1937 Act, as amended by HERA. In other cases, however, HUD was required to exercise discretionary authority to determine how the statutory change should be implemented. HUD further explained that with respect to the conforming regulatory changes, a conforming change does not necessarily mean that HUD is adopting in regulation the statutory language verbatim. For purposes of clarity or to give precision to the statutory language or statutory intent, the conforming regulatory change may be worded differently than the statutory language.

May 15, 2012, Proposed Amendments. The following presents a brief summary of the key regulatory revisions proposed by the May 15, 2012 rule. A detailed description of all proposed amendments, including correction or updating of regulatory or statutory citations, specific terminology changes, and redesignation of regulatory sections as a result of the inclusion of new sections, and the reasons for the amendments can be found in the preamble to the proposed rule at 77 FR 28743 to 28748.

Annual Income (24 CFR 5.609(c)(14)). A conforming change was made to 24 CFR 5.609 to include the Veterans Administration (VA) disability benefits with the exclusion from income for deferred Social Security benefits in § 5.609(c)(14).

Rent to Owner: Reasonable Rent (24 CFR 982.507). The procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) or assistance under the HOME Investments Partnerships (HOME) program was streamlined by section 2835(a)(2) of HERA, and the proposed rule revised § 982.507(c) to provide the streamlined process, with the exception of HOME-assisted units. As advised in the May 15, 2012, proposed rule, the rent reasonable applicable to HOME-assisted units would be addressed by separate rulemaking for the HOME program and included a placeholder to cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

Applicability of the Tenant-Based Voucher Rule (24 CFR 983.2). The proposed rule removed reference to ''cooperative housing'' from § 983.2(b)(3). Section 983.2(b) lists the types of situations to which the tenant-based voucher provisions of 24 CFR part 982 do not apply to the PBV program, and paragraph (b)(3) lists the special housing types to which the part 982

provisions do not apply. The inclusion of ''cooperative housing'' in the list of special housing types to which the part 982 provisions do not apply is incorrect, and HUD proposed to correct this error.

PBV Definitions (24 CFR 983.3). The proposed rule added new definitions, and removed and revised others to reflect HERA's amendment to section 8(o) of the 1937 Act and to remove reference to cooperative housing. In addition, the rule proposed to revise the definition of ''existing housing'' for the purpose of establishing clear and measurable standards in determining whether a proposed project is eligible for selection as existing housing. The proposed revision was intended to address the potential circumvention of rehabilitation program requirements by selecting a project as existing housing when rehabilitation will be performed on the project shortly after execution of the housing assistance payment (HAP) contract.

Description of the PBV Program (24 CFR 983.5). The proposed rule amended § 983.5(c) to provide that although a PHA has the discretion to decide whether to operate a PBV program, the PHA must notify HUD of its intent to project-base its vouchers.

Maximum Amount of PBV Assistance (24 CFR 983.6). The proposed rule amended § 983.6 to require advance notification to HUD of the PHA's intent to project-base its vouchers.

Special Housing Types (24 CFR 983.9). The proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program.

Project-Based Certificate (PBC) Program (24 CFR 983.10). Section 6904 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, approved May 7, 2007) provides that a PHA may renew or extend PBC housing assistance payment (HAP) contracts as PBV HAP contracts, under certain conditions. The amendment to § 983.10 implemented this change.

Owner Proposal Selection Procedures (24 CFR 983.51). The proposed rule revised paragraph (a) of § 983.51 to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA to section 8(o) of the 1937 Act. Additionally, the proposed rule slightly reworded paragraph (b)(2) to further clarify that a PHA may select, without competition, a proposal for housing assisted under a federal, state or local government housing assistance, community development, or supportive services program that required a competition for the selection of proposals; that is, the PHA need not conduct another competition.

Housing Type (24 CFR 983.52). The proposed rule revised § 983.52, which provides standards by which a unit will be considered an existing unit for purposes of the PBV program, to provide that a unit must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA. The proposed revision also would limit the total amount of work that must be performed to facilitate compliance with HQS to $1,000 per assisted unit. Additionally, the proposed revision provided that to be considered an existing unit for purposes of the PBV program, the owner must not plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than $1,000 per assisted unit.

Prohibition of Assistance for Ineligible Units (24 CFR 983.53). Section 2835(a)(1)(F) of HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. The proposed rule revised § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

Prohibition of Excess Public Assistance (24 CFR 983.55). Section 2835(a)(1)(F) of HERA removes the requirement to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if such a review has been conducted by the applicable state or local agency. The proposed rule, in § 983.55, clarified that the subsidy layering requirements are not applicable to existing housing.

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56). Prior to amendment by HERA, PBV assistance was limited to 25 percent of the units in a building. Section 2835(a)(1)(A) of HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace the term ''building'' with the term ''project,'' which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled families, or a project that serves both categories of families.

Environmental Review (24 CFR 983.58). As stated in both the November 2008 notice and the May 2012 proposed rule, HUD noted that any federally required environmental review is ''required by law or regulation,'' and HUD has not identified any federally required environmental reviews that would be eliminated by Section 8(o)(13)(M)(ii) of the 1937 Act, as added by Section 2835(a)(1)(F) of HERA. Accordingly, HUD proposed no changes to § 983.58, except to make a minor change to § 983.58(d) to note that the term ''release of funds'' is defined in § 983.3, which is the definition section,

PHA-Owned Units (24 CFR 983.59). The proposed rule added a new paragraph § 983.59 to provide a clarification of the term of the initial and renewal HAP contract that is consistent with section 8(o)(13)(F) of the 1937 Act, which provides that the PHA and the independent HUD-approved entity must agree on the term of the HAP contract and any HAP contract renewal for PHA-owned units. Additionally, the proposed rule removed the requirement that the independent entity approved by HUD to determine initial contract rents to owner must be based on an appraisal by a licensed, state-certified appraiser.

Housing Quality Standards (24 CFR 983.101). The proposed rule revised § 983.101 to exclude cooperative housing from the list of special housing types that are inapplicable to the PBV program.

Purpose and Content of the Agreement to Enter into a HAP Contract (24 CFR 983.152). The May 15, 2012 rule proposed to clarify § 983.152 by striving to establish a bright-line definition of ''commencement of construction'' to ensure there is no confusion concerning the requirement that a PHA must enter into an agreement with the owner prior to the start of construction or rehabilitation on a project. The clarification provided that construction commences when excavation or site preparation (including clearing of the land) begins for the housing.

When Agreement Is Executed (24 CFR 983.153). The proposed rule clarified when the Agreement, referenced in § 983.153, must be executed.

Purpose of HAP contract (24 CFR 983.202). The proposed rule made explicit the existing practice authorized by § 983.153, which is that a HAP contract covers a single project, with the exception of single-family scattered site projects. If an owner has multiple projects, then each project must be

covered by a separate HAP contract under the proposed clarification.

HAP Contract Information (24 CFR 983.203). The proposed rule revised § 983.203 to substitute the term ''project'' for ''building'', consistent with the statutory change.

Extension of Term of Initial Housing Assistance Payment (HAP) Contract (24 CFR 983.205(a)). The maximum term of the initial HAP contract provided in section 8(o)(13)(F) of the 1937 Act is extended from 10 to 15 years as a result of the amendment to the 1937 Act made by section 2835(a)(1)(B) of HERA, and the proposed rule made a conforming change to 24 CFR 983.205 to reflect the new HAP term.

Extension of Initial Term (24 CFR 983.205). The proposed rule made a conforming change to § 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by section 2835(a)(1)(C) of HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

The proposed rule also made a clarifying change to § 983.205(d) to require HUD approval when an owner seeks to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level.

Proposed Statutory Notice Requirements: Contract Termination or Expiration (Adding a New 24 CFR 983.206). The proposed rule added a new § 983.206 to address the notification requirements established by section 8(c)(8)(A) of the 1937 Act, as amended by HERA, that the owner must meet.

HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207). Section 983.207 (formerly § 983.206) was revised to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA.

Owner Certification (Redesignated 24 CFR 983.210). Consistent with the change to § 983.53 (Prohibition of Assistance for Ineligible Units), the May 15, 2012, rule proposed to revise paragraph (i) in § 983.210 (formerly § 983.209) to clarify that the owner's certification does not apply in the case of an assisted family's membership in a cooperative. The proposed rule also added a new paragraph (j) to § 983.210, consistent with the revised definition of ''existing housing'', to reflect what constitutes existing PBV housing.

Removal of Unit from HAP Contract (24 CFR 983.211). The proposed rule added a new section to define when units are to be removed from the HAP contract. The proposed rule inadvertently stated that this new section clarified existing policy, but in fact the new section reflected a proposed change. In addition, the preamble explanation that the change is already referenced in part 983 was also inaccurate. The preamble language should have been included in the preceding section which discussed the owner certification requirements in § 983.210. New § 983.211 addressed removing a unit from the HAP contract. PHAs receive administrative fees based on the number of units under a HAP contract. If the PHA has not paid a housing assistance payment on behalf of a family for 180 days, the family is no longer considered a participant in the program and, as such, the PHA should no longer receive administrative fees for the unit.

How Participants Are Selected (24 CFR 983.251(a) and (d)). In § 983.251(a), the proposed rule clarified the pre-existing policy that restricts owners from leasing to family members or relatives. This section was revised to remove any ambiguity that a PHA may not approve the tenancy of a family if the owner (including a principal or other interested party) of the unit to be leased is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with a disability. The proposed rule also provided that the owner certification, already required under § 983.209, include language that makes explicit that the unit will not be rented to the enumerated list of relatives.

The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256). The proposed rule revised § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease, and not simply the initial term. Revised paragraph (f) provides that the lease must allow for automatic renewal after the initial term of the lease. Consequently, the PBV program will provide tenants with long-term leases unless the owner provides a good cause for termination or nonrenewal of the lease.

Owner Termination of Tenancy and Eviction (24 CFR 983.257). The proposed rule revised § 983.257 to substitute the term ''project'' for ''building'', consistent with the statutory change. The proposed rule also removed paragraph (b)(3) from § 983.257, which allows an owner to refuse to renew a lease without good cause upon lease expiration. This change was made for the same reasons the change was made to § 983.256(f), which is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease.

Continuation of Housing Assistance Payments (24 CFR 983.258). The proposed rule added a new § 983.258 to clarify that housing assistance payments continue until the tenant rent equals the rent to owner. After 180 days of no subsidy payments being made on behalf of the family, the unit is to be removed from the HAP contract pursuant to § 983.211.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260). The proposed rule revised § 983.260 (formerly § 983.259) to include the term ''project'' in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), that if a PHA offers the family tenant-based rental assistance, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262). The proposed rule revised § 983.262(d) (formerly § 983.261) to substitute the term ''project'' for ''building'', consistent with the HERA change in terminology, and to correct an incorrect regulatory reference. Section 983.262(b) was also revised to clarify existing policy that a PHA, in referring families to excepted units, need not choose between elderly or disabled families, but may refer both.

Determination of Rent to Owner (24 CFR 983.301). Section 2835(a)(1)(D) of HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The amendment made by the proposed rule to § 983.301(d) reflects the discretion granted to PHAs.

Redetermination of Rent to Owner (24 CFR 983.302). The proposed rule added a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except in the following

situations: (1) To correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to a subsidy layering review; or (3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

Reasonable Rent (24 CFR 983.303). The proposed rule revised § 983.303(a) to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision provides that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2).

Other Subsidy: Effect on Rent to Owner (24 CFR 983.304). The proposed rule revised § 983.304(e) to clarify that rent reduction is mandatory when the results of a subsidy layering review disclose the need for rent reduction.

II. Changes Made at the Final Rule Stage

In response to public comment and further consideration of certain issues by HUD, this final rule makes the following revisions to the proposed rule. With respect to changes made in response to public comment, the issues raised by the commenter and HUD's basis for responding to the comments are addressed in Section III of this preamble.

Rent to Owner: Reasonable Rent (24 CFR 982.507)—Preamble Clarification. As noted in Section I of this preamble, at the proposed rule stage, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) was streamlined by section 2835(a)(2) of HERA. In the preamble to the proposed rule, at 77 FR 28743, HUD noted that HERA makes several changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. In this preamble to the final rule, HUD clarifies that this provision is applicable only to the Section 8 tenant-based voucher program and not to the Section 8 project-based voucher program.

Additionally, at 77 FR 28743, HUD stated that the rent is to be considered reasonable if the rent does not exceed the greater of: (1) The rent for other LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance, and (2) the payment standard established by a PHA for a unit of the size involved. However, the more accurate way for HUD to have stated this provision is as follows: ''Rent reasonableness is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance.'' The regulatory text for § 982.507 was stated correctly in the proposed rule and no change is required at this final rule stage.

As advised in the May 15, 2012, proposed rule, the revision to the HOME program is being made by separate rulemaking. Although a final rule making several regulatory amendments to the HOME program was published on July 24, 2013, that rule did not address this issue. Therefore, this final rule will continue to include, as a placeholder, a cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

PBV Definitions (24 CFR 983.3)—Withdrawn Proposed Revised Definition of ''Existing Housing'' but Added Revised Definition of ''Special Housing Type''. At this final rule stage, HUD determined to withdraw its proposed changes to the definition of ''existing housing.'' HUD leaves in place the currently codified definition of existing housing. Overall, commenters did not favor HUD's proposed changes, and suggested alternatives to HUD's proposal, which are described in Section III of this preamble. Given the many comments on HUD's proposed changes to the definition of ''existing housing'', HUD has decided to further consider proposed revisions to the definition of ''existing housing.'' HUD will further consider what may be the best metric for determining compliance with HQS; that is, whether HUD should measure the amount of time that must pass from the date of selection to date of compliance, or identify an appropriate dollar standard of the total amount of work that must be performed, or determine some other mechanism. HUD will resubmit for public comment any proposed changes to the definition of ''existing housing.''

At this final rule stage, HUD is adopting the proposed revised definition of ''special housing type'' but with one additional change. HUD has revised the definition of ''special housing type'' to remove reference to cooperative housing.

Cross-reference to other Federal requirements (24 CFR 983.4) Revision to ''Labor standards'' cross-reference. In this final rule, HUD updates the reference to labor standards provisions applicable to assistance under the PBV program to remove the reference to labor standards ''applicable to an Agreement'' covering nine or more assisted units and substitutes a reference to labor standards ''applicable to development (including rehabilitation) of a project comprising'' nine or more units. This language clarifies that Davis-Bacon requirements may apply to existing housing (which is not subject to the agreement) when the nature of any work planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project.

Description of the PBV Program (24 CFR 983.5) and Maximum Amount of PBV Assistance (24 CFR 983.6)—Clarification of Timing of Notification Requirements. As noted in Section I of the preamble, the proposed rule amended § 983.5(c) and § 983.6 to provide that a PHA must notify HUD of its intent to project-base its vouchers.

This final rule clarifies in § 983.6 that the notification provided by a PHA to HUD of the PHA's intent to project-base its vouchers must be provided before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2). This clarification is also made in § 983.5(c) by cross-reference to § 983.6(d).

Special Housing Types (24 CFR 983.9). As noted in section I the proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program. This final rule clarifies the requirements for rental assistance when families lease cooperative housing from cooperative members in § 983.9(c)(3).

Owner Proposal Selection Procedures (24 CFR 983.51). In addition to the changes noted in Section I from the proposed rule, HUD is adopting a new paragraph (g) to clarify that an owner proposal selection does not require submission of a Form HUD–2530 or HUD previous participation clearance. Questions are raised from time to time as to the applicability of the previous participation review and clearance procedures and requirements that are codified in 24 CFR part 200, subpart H, to the PBV program. Section 200.213 of these regulations, entitled ''Applicability of procedure'' correctly lists the HUD programs to which the previous participation requirements apply. The PBV program is not listed as one of the programs governed by these procedures, and nor have the

regulations in 24 CFR part 983 ever cross-referenced to the requirements in 24 CFR part 200, subpart H, to confirm the applicability of these requirements and procedures.

Housing Type (24 CFR 983.52)—Withdrawn—Proposed Revised Definition of ''Existing Housing''. For the same reasons that HUD is withdrawing its originally proposed definition of ''existing housing'' in § 983.3, HUD similarly does not adopt the originally proposed definition of ''existing housing'' in § 983.52. However, in § 983.52, HUD clarifies that units for which rehabilitation or new construction commenced after the owner's proposal submission but prior to execution of the AHAP do not qualify as existing housing. Changes to the definition of ''existing housing'' will be addressed through the **Federal Register** notice described under the above discussion of § 983.3.

Prohibition of Assistance for Ineligible Units (24 CFR 983.53)—Addition of Prohibition on Assistance for Units for which Construction or Rehabilitation Commenced Prior to AHAP. As noted in Section I of this preamble, HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. Accordingly, the proposed rule revised § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

This final rule adds a new paragraph (d) to § 983.53 to clarify that a PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced, as defined in § 983.152 (discussed below), prior to execution of the AHAP.

Prohibition of Excess Public Assistance (24 CFR 983.55)—Further Clarification of When Subsidy Layering is Not Required. As noted in Section I of the preamble, the proposed rule clarified that the subsidy layering requirements are not applicable to existing housing. The final rule revises § 983.55 to add language that further clarifies that a ''further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.''

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56)—Removal of Substitution of ''Project'' for ''Building'' in § 983.56(b)(1)(i). As noted in Section I of the preamble, HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace the term ''building'' with the term ''project,'' which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled families, or a project that serves both categories of families. In response to public comment, HUD agreed with commenters that the terminology for paragraph (b)(1)(i), which addresses when PBV units are not counted in the exception to the 25 percent building cap, was ambiguous. In the final rule, HUD retains the term ''building'' when used in paragraph (b)(1)(i) to refer to a single-family building.

Purpose and Content of the Agreement to enter into HAP Contract (24 CFR 983.152)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced. As noted in Section I of the preamble, the proposed rule clarifies when the Agreement must be executed and defines the start of construction or rehabilitation. The final rule adds a cross-reference to § 983.153 and states that the prohibition on construction or rehabilitation applies after proposal submission.

When Agreement Is Executed (24 CFR 983.153)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced. As noted in Section I of the preamble, the proposed rule clarified when the Agreement, referenced in § 983.153, must be executed. The final rule further clarifies that a PHA is prohibited from entering an Agreement when after proposal submission construction or rehabilitation has started prior to the execution of the Agreement.

Extension of Initial Term (24 CFR 983.205)—Clarification of Additional Extensions beyond Initial Extension of Term. As noted in Section I of this preamble, the proposed rule made a conforming change to § 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

In response to public comment, the final rule revises this section to clarify that future extensions beyond the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. The final rule amendment further provides that extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term.

In response to public comment, the final rule also amends § 983.205(d) to remove the requirement of notice to and advance approval by HUD when owners decides to terminate the HAP contract, and maintains the existing requirement that owners provide notice to the PHA.

HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207)—Addition of Language to Specify How to Add Contract Units. As noted in Section I of the preamble, the proposed rule revised § 983.207 (formerly § 983.206) to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA. In response to public comment, the final rule revises paragraph (b) to clarify how PBV contract units may be added in the same project. The revision provides that, at the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with § 983.56(b)), or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project.

Owner Certification (Redesignated 24 CFR 983.210)—Proposed Revision for Existing Housing Withdrawn. Although, at this final rule stage, HUD is withdrawing its proposed definition of ''existing housing'' in §§ 983.3 and 983.52, HUD retains proposed new paragraph (j), with certain revisions. As noted above in the discussion of § 983.4, HUD revises the reference to labor standards provisions applicable to assistance under the PBV program to clarify that Davis-Bacon requirements may apply to existing housing when the

nature of any work (including rehabilitation) planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project. Paragraph (j) of the final rule reflects that in such case, it will be necessary for the certification to encompass compliance with Davis-Bacon wage requirements.

Removal of Unit from HAP Contract (24 CFR 983.211). As noted in Section I of the preamble, the proposed rule added a new section to define when units are to be removed from the HAP contract. Section 983.211(a) requires that units with families whose income has increased during their tenancy to an amount equivalent to the rent provider to the owner, shall be removed from the HAP Contract. If the project is partially assisted, the PHA may substitute a different unit for the unit removed from the Contract if it is possible for the HAP contract to be amended. In response to public comment, HUD at the final rule stage is providing that if the project is not partially assisted, the unit removed from the HAP contract can be re-instated when the ineligible family vacates. In addition, HUD is clarifying that the PHA may substitute a different unit for the unit removed from the contract when the first eligible substitute becomes available even if at the time a unit is removed another unit is not immediately available to substitute under the HAP contract.

How Participants Are Selected (983.251(d))—Clarification of Preferences for Services Offered. In § 983.251(d), the proposed rule substituted the word ''qualify'' for ''need'' and added ''or in conjunction with specific units.'' The language submitted at the proposed rule stage stated that a preference could be provided for disabled families who ''qualify for services at a particular project or in conjunction with specific units.'' The substitution was proposed on the basis that ''qualify'' may better convey the intent of this section. However, at the final rule stage and following further consideration of ''qualify'' versus ''need'', HUD is returning to the original language of ''need services'' out of concern that ''qualify for'' may be interpreted in such a way to limit the population eligible for the preference. Additionally, HUD is returning to the original language ''services at a particular project'' out of concern that ''or in conjunction with specific units'' may be unclear. Although HUD is retaining the language currently codified in HUD's regulations, HUD will continue to examine the language of this section and how it may be improved, recognizing that neither term —'' need'' or ''qualify''—may provide the clear distinction that PHAs are looking for. The best approach to helping PHAs understand the intent of this section may be for HUD to issue guidance that provides examples of how a preference may be structured.

The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256)—Clarification of Owner Termination of Lease for Good Cause. As noted in Section I of the preamble, the proposed rule revised § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease.

The final rule clarifies that that if the owner terminates the lease, the termination must be for good cause.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260). The proposed rule revised § 983.260 (formerly § 983.259) to include the term ''project'' in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), that, if a PHA offers the family tenant-based rental assistance under the PBV program, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

The final rule further clarifies PHA termination of housing assistance payments for wrong-sized or accessible unit by revising paragraph (c) in two respects. Paragraph (c)(1) provides that 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 the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit, and, as clarified in this final rule, if the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

Paragraph (c)(2) provides that if the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of § 983.260 (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, and, as clarified by this final rule, remove the unit from the HAP contract.

When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262)—Providing PHAs with the Option to Continue to Count an Excepted Unit Based on Elderly or Disabled Family Status, without an Elderly or Disabled Member under Certain Conditions. As noted in Section I of this preamble, the proposed rule revised § 983.262 (formerly § 983.261) to substitute the term ''project'' for ''building'', and to clarify in § 983.262(b) that a PHA, in giving a preference to excepted units, need not choose between the elderly or disabled families, but may give a preference to both.

This final rule also makes a change to respond to existing concerns with respect to excepted units based on elderly or disabled family status and the loss of occupancy of the unit by the elderly or disabled family member through death, illness, or other circumstances beyond the family's control. Under current requirements, the family must vacate the unit and the PHA must cease paying housing assistance payments on behalf of the family because they no longer qualify for the excepted unit. The result of such requirements is often displacement of the family during a time when the family is dealing with hardship due to the loss, permanent or temporary of the elderly or disabled family member. The final rule adds a new paragraph (e) to § 983.262 to give PHAs the discretion to allow the family to continue to reside in the excepted unit, and to continue to count the unit as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, then in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family member.

Determination of Rent to Owner (24 CFR 983.301)—Clarification that the PHA Has the Discretion to Elect in the HAP Contract that Rent to Owner Shall Not be Reduced. As noted in Section I of this preamble, HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The preamble to the proposed rule noted that HERA did not alter the rent reasonableness requirements of section 8(o)(10)(A), and that therefore these requirements must continue to be met. The proposed rule revised § 983.301(e)

to provide that that the rent to owner shall not be reduced below the initial rent, with certain limitations, in accordance with § 983.302(c)(2).

The final rule revises paragraph (e) to clarify that the PHA has the discretion to elect in the HAP contract that the rent to owner shall not be reduced below the initial rent subject to the limitations of § 983.302(c)(2). Accordingly, in this final rule, paragraph (e) provides that the PHA shall determine the reasonable rent in accordance with § 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

Redetermination of Rent to Owner (24 CFR 983.302)—Further Clarification of When Rent to Owner Shall Not Be Reduced. As noted in Section I of this preamble, the proposed rule added a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except under certain circumstances. The final rule revises paragraph (c)(2) of § 983.302 to clarify that ''if the PHA elected within the HAP contract to not reduce rents below the initial rent to owner,'' then the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract except for the ''exception'' circumstances provided in the regulation.

Reasonable Rent (24 CFR 983.303). As noted in Section I of this preamble, the proposed rule revised § 983.303(a) to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision provides that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2).

This final rule further clarifies the comparability requirement of § 983.303(a). Section 983.303(a) is revised to provide that at all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except, as provided in this final rule, where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

III. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on July 16, 2012, and 22 public comments were received in response to HUD's May 15, 2012 proposed rule. Comments were submitted by individual members of the public, Fair Housing interest groups, housing associations, and public housing authorities. The following presents the significant issues and questions related to the proposed rule raised by the commenters.

A few commenters submitted comments generally about their views of the rule. These comments, for which no response is required, included such comments as the following.

A commenter stated that HUD must ''broaden its thinking with regard to administration of the project-based voucher program to recognize the important preservation tool that project-based vouchers are and will continue to be (particularly in light of the new Rental Assistance Demonstration (RAD) program). The commenter stated that, in reading the proposed changes, it was struck by a tension between expanding program use and flexibility with a desire to keep the program the small boutique program that it started out to be. The commenter stated that the tension is understandable in that the project-based voucher program was originally intended to be a very small (and voluntary) program to address tight rental market, but as Congress cuts back on funding for federal housing programs, the ability to preserve the existing housing stock has become more critical and Congress has recognized that it must use its scarce resources to the best outcome (in this case the preservation of a scarce supply of affordable rental housing). Other commenters stated that ''the PBV program is an essential component of state and local supportive housing strategies to reduce reliance on restrictive settings which violate the Americans with Disabilities Act, such as state institutions, board and care homes, adult care homes, and nursing homes.'' Another commenter recommended that HUD revise the program further to allow greater flexibility to support PBV assistance. The commenter stated that ''HUD should lobby to increase the percentage of budget authority for PBV units when the PHA is utilizing PBVs as replacement housing for public housing.''

The following presents specific issues raised by commenter and HUD's response to the comments.

Issue: Rent to Owner: Reasonable Rent (§ 982.507)

Comment: Commenters stated that HUD's proposed language at § 982.507, regarding the rent reasonableness test, is contrary to statutory intent by limiting the rent to the lesser of the reasonable rent and the payment standard. The commenters repeated the statutory language that states ''the rent shall be considered reasonable if it does not exceed the greater of (1) the rent for other LIHTC or HOME assisted units in the project not occupied by families with tenant based assistance, or (2) the payment standard established by the PHA for a unit of the size involved.'' The commenters recommend that HUD re-evaluate the proposed language. A commenter stated that Congress also has provided that the rent is *not* reasonable if it exceeds both the rents charged for comparable units receiving tax credits that are not occupied by voucher holders and the PHA payment standard for the unit. The commenter stated that, in other words, if the tax credit rent is $600 and the payment standard is $650, a PHA can approve a voucher rent at $650, subject to a rent reasonableness test. Using this example, HUD could not approve a rent of $675 because it is greater than the payment standard and the tax credit rent.

HUD Response: HUD disagrees with the first commenter's interpretation of the statute. The first subsection in the HERA amendment plainly states that a rent comparability analysis is not required by the PHA if the rent to owner does not exceed the rent for other comparable, non-voucher LIHTC units in the project. However, the second subsection of the HERA amendment is properly read as stating that if the proposed rent to owner will exceed the amount in the preceding paragraph, the amendment does not create an exception to the normal rent comparability requirement in section 8(o)(10)(A) of the U.S. Housing Act of 1937. In addition, the HERA amendment imposes an additional rent cap based on the payment standard in these cases. Therefore, if the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability analysis in accordance with program requirements. In addition, the PHA must cap the rent at the payment standard. The rent to owner in these cases is therefore set at the lesser

of the comparable market rent determined by the PHA and the payment standard.

HUD generally agrees with the commenter that used dollar amounts to illustrate the test that must be performed when the rent requested by the owner is greater than the rents charged for other comparable LIHTC units in the project that are not occupied by voucher families. However, the commenter excluded the possible impact of the required rent comparability analysis performed by the PHA. For instance, if the PHA's comparability analysis determined that the reasonable rent was $625 that would be the rent to owner, notwithstanding the fact that the payment standard was $650.

Comment: Commenters stated that the statute does not require PHAs ''to conduct a rent reasonableness test if the requested voucher rent is at or below the tax credit rent for units not occupied by a voucher holder.'' A commenter gives an example, stating that ''if the tax credit rent paid by unassisted tenants is $600 and the rent for the voucher unit is $550, the PHA would not be required to compare the unit rent to unassisted units in the private market — the rent would be deemed reasonable.

HUD Response: Rent reasonableness is required to be determined as otherwise provided by paragraph 8(o)(10) of the 1937 Act except that rent reasonableness shall not be required if the voucher rent is equal to or lesser than other comparable LIHTC units occupied by non-voucher families. The statute does not state that such rents shall be ''deemed reasonable'' as suggested by commenters. Therefore, HUD submits that the statutory language is permissive, and that while HUD may not require a rent comparability determination in the situation described, the statute does not prohibit a PHA from performing such determination if it so chooses.

Comment: Commenters stated that the proposed language could result in reducing rents below existing rents and undercut the statute. The commenters recommended that HUD revise the language ''to follow the 'greater of' statutory language and avoid the unintended penalty for owners requesting legitimate rent increases that threaten no additional harm to assisted tenants.'' Other commenters stated that requiring an owner to reduce rent below existing rents would be contrary to HUD's own intentions.

HUD Response: Commenters appear to believe the statute states that the rent shall be considered reasonable if it does not exceed the greater of (1) the rent for other LIHTC or HOME assisted units in the project not occupied by families with tenant based assistance, *or* (2) the payment standard established by the PHA for a unit of the size involved. The statute actually states that the rent shall not be considered reasonable if it exceeds the greater of (1) the rents charged for other comparable units receiving LIHTC or HOME assistance in the project that are not occupied by families with tenant based assistance, *and* (2) the payment standard established by the PHA for a unit of the size involved. The statutory language imposes a payment standard cap in addition to the required rent reasonableness test both at the time of initial rent setting and when an owner requests a rent increase. As noted previously, if the rent to owner (at initial rent setting or during rent increases) does not exceed the LIHTC rent for comparable, non-voucher units, a PHA rent reasonableness analysis is not required and there is no payment standard limitation.

Comment: A commenter requested that HUD explain why it is adding the additional rent reasonableness requirement and why HERA was able to waive the rent comparison when the rent does not exceed other LIHTC projects but not when the requested rent exceeds other LIHTC rents?

HUD Response: HUD has clarified in the preamble that if the requested rent does not exceed the rent for other LIHTC units in the project not occupied by families with tenant-based assistance, that a rent reasonableness determination is not required. HUD believes that the statute is permissive and that a PHA may perform a rent reasonableness comparison in this instance if it so chooses. The statute states that the requirements of 8(o)(10) of the 1937 Act apply including 8(o)(10)(A), which requires that the rent for dwelling units for which a housing assistance payment contract is established under subsection 8(o) of the statute shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market. The HERA amendment does not render the requirement for a rent comparison analysis pursuant to section 8(o)(10)(A) of the 1937 Act inapplicable when the test under section 8(o)(10)(F)(ii) is met. Rent reasonableness requirements pursuant to section (8)(o)(10)(A) continue to apply.

Comment: A commenter recommended that HUD clarify ''that the HERA policy for determination of 'reasonable rents' for LIHTC units with tenant-based vouchers, incorporated in § 982.507(c)(2), does not apply to project-based vouchers.''

HUD Response: HUD agrees with this comment and in this preamble to this final rule HUD has clarified that the regulatory change is only applicable to the tenant-based voucher program.

Comment: A commenter stated that the HUD should leave the existing regulatory language as is because the regulatory language complies with the requirements in HERA and HERA ''does not require PHAs to lower PBV owners' rents if/when applicable FMRs decrease by five percent or more, as has been directed by some HUD Field Offices.'' The commenter stated that the regulation should allow ''PHAs to conduct rent reasonableness if warranted, but *not* for PHAs to necessarily lower the existing PBV rent in these circumstances.'' The commenter stated that ''under the circumstances described above, regarding decreases in FMR values of five percent or more, a PHA receives a property owners' annual rent increase request for a given unit but a PHA's rent reasonableness determination justifies a lower PBV rent, than a PHA can lower the PBV rent to the rent reasonable level but not lower than the initial rent. Some HUD Field Office personnel have misinterpreted and/or misapplied the PBV regulations governing reasonable rents in the PBV program, which is why we believe that clarification of the proper implementation of this regulation is welcomed.''

Another commenter requested that HUD revise § 982.507(c)(2) to clarify that under HERA PHAs are *not* required to conduct a rent reasonableness determination (in accordance with the existing regulations for Section 8 tenant-based and project-based voucher programs) if the initial rent or rent requested at subsequent intervals, is equal to or less than the rent for other comparable units receiving tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households. The commenter also requested that HUD clarify that ''there could be a scenario where the initial rent requested or the rent at intervals during subsequent lease terms would be 'rent reasonable' if it is equal to *the greater of* (1) the rent for other comparable units receiving such tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households; or (2) a PHA's payment standard for an applicable unit size.''

HUD Response: The HERA change relates to rents for tenant-based voucher holders in projects with LIHTCs or

HOME units. It does not apply to the project-based voucher program. In addition, the existing regulatory text at § 982.507 also does not apply to the project-based voucher program. The commenters' other concerns are addressed in response to other similar comments stated above.

Issue: Revised Definition of ''Existing Housing'' (§§ 983.3, 983.52(a))

As already discussed in this preamble, HUD is not revising the definition of ''existing housing'', but nevertheless wants to share the public comments that HUD received on this issue. Commenters responded to HUD's proposal as follows:

Comment: Several commenters submitted comments on these sections. A commenter recommended that HUD review the impact of the new limitations on existing housing. The commenter stated that while the previous text defined ''existing housing'' as any housing that met HQS upon the proposal selection date, the revised language limits existing housing to units that do not require more than $1,000 in repairs to meet HQS, and requires the owner to certify that planned rehabilitation does not exceed $1,000 in the first year of the HAP contract. Commenters stated that the proposed time limit and the monetary limit of $1,000 for performing compliance work are inappropriate.

A commenter stated that this threshold is very low and ''does not accurately capture the differences between development and acquisition-only transactions.'' Another commenter stated that this threshold may discourage owners from conducting voluntary repairs and replacements to achieve greater accessibility and/or energy efficiency. A commenter questioned what an owner should do if a tenant vacates a unit within one year after a HAP contract is executed?

A commenter stated that ''an owner should have the ability to do more than $1,000 worth of work on the unit'' because to do a simple '' 'unit turnover'—painting, cleaning and perhaps recarpeting—would cost more than $1,000.'' Other commenters expressed concern about the cap when scheduled rehabilitation is required.

A commenter recommended changing the definition to allow PHAs to determine the threshold or in the alternative if HUD determines a threshold is appropriate, a reasonable level based on guidelines and thresholds of other federal funding programs should be considered. ''For example, low-income housing tax credits and the FHA loan programs use higher rehabilitation thresholds of approximately $6,500 per unit.''

Other commenters stated that the new definition is contrary to HUD's new Rental Assistance Demonstration (RAD) program which encourages owners of certain types of assisted multifamily housing with expiring subsidy contracts to convert to PBVs. Commenter stated that many of these projects currently meet HQS but will require additional rehabilitation with tenants in place. Without the flexibility for PHAs to treat these projects as existing housing, as appropriate, many of these proposed preservation transactions will not be feasible.

A commenter stated that the same $1,000 per unit rehab number was used for Section 8 moderate rehabilitation over 8 years ago and HUD has failed to recognize inflation costs. Additionally, the commenter noted that a scheduled rehabilitation that costs more than $1,000 to meet HQS standards is not the same as a gut rehab which would require tenants to be displaced. Another commenter stated that the proposed limit will ''hamper HUD's ability to implement the recent preservation policy to encourage the conversion of Rent Supplement or Rental Assistance Payments to project-based vouchers. If HUD is indeed focused on preservation of the assisted housing stock, its rules must reflect that commitment.''

Commenters stated that this new definition will complicate transactions when eligible residents are already in place and renovations are undertaken or when renovations must be made to new or rehabilitated units that were not originally PBV units. Other commenters stated that the new definition will significantly narrow those units that will qualify as existing housing and negatively impact the preservation of existing housing. A commenter stated that the revised definition is contrary to HERA's goal to reduce regulatory requirements and make it easier to attach PBVs to existing housing.

Commenters stated that ''the procedures for rehabilitated housing will delay the initiation of rental assistance, which will create significant cash shortfalls for many preservation transactions which rely on the PBV income stream from ''Day One'' to support new financing (for rehabilitation and often acquisition, where the property is being transferred). These projects meet HQS on Day One, but may require significant additional rehab (e.g. for energy retrofits and modernization) to satisfy the requirements of lenders and tax credit investors, or to improve long-term sustainability.''

Commenters recommended that HUD maintain the current regulatory definition. A commenter also recommended eliminating the second half of the proposed definition. Other commenters recommended deleting the part of ''the proposed definition that would eliminate the possibility of rehabbing a property in the first year of the HAP contract and by increasing the per-unit rehabilitation dollar amount for units that need immediate repair to pass HQS.'' A commenter recommended the proposed definition be amended to allow PHAs discretion ''to qualify as existing housing any property that meets (or can readily meet) HQS, regardless of the anticipated level of additional future rehabilitation, where such rehabilitation will be carried out with tenants in place and is necessary and appropriate to extend the remaining useful life of the property as affordable housing.'' Another commenter recommended maintaining the current definition because the ''flexibility has been critical to preserving existing units in communities where affordable rental housing is scarce or units are being lost due to gentrification.'' Other commenters recommend that HUD preserve and promote the discretion of local PHA's by keeping the current definition.

Issue: Revising the ''PHA Owned Unit'' Definition (§ 983.3)

Comment: Commenters stated that the proposed rule failed to address the definition of ''PHA Owned Unit'' and stated that the current definition causes continued confusion to industry participants, HUD, and HUD's Office of Inspector General (OIG). A commenter stated that the purpose of distinguishing PHA-owned units in the regulation is to prevent self-dealing by PHAs where they both own and administer voucher assistance for a given unit, and that the existing definition is unnecessarily broad and in some cases has led HUD to consider units as PHA-owned where the PHA is merely a ground lessor or a mortgagee, but does not exercise control over the project itself. The commenter stated that when a unit is deemed PHA-owned, then the regulations at § 983.59 apply. Another commenter stated that these require the engagement and compensation of an independent entity, rather than the PHA, for certain functions, including inspections and rent reasonableness determinations. Another commenter recommends tightening the definition so that the § 983.59 requirements apply only in those situations where the PHA controls the project and there could actually be

a conflict of interest in a PHA performing those functions itself.

A commenter also recommended that the definition require an independent entity to be involved when a PHA is both the owner and the voucher administrator.

Some commenters stated that HUD's definition is so broad that PHAs are determined to ''own'' a property regardless if they have no control over the property operations. The commenters recommended that HUD tighten the definition to ensure that ownership equates with having control over the property and an actual conflict of interest exists.

Other commenters recommended using the following definition ''PHA-owned unit means a unit in a project that is owned by the PHA, by a PHA instrumentality, or by a limited liability company or limited partnership in which the PHA (or PHA instrumentality) holds a controlling interest in the managing member or general partner.''

HUD Response: HUD appreciates the commenters' recommendations concerning the definition of PHA-owned units. However, HUD has not proposed changes to the definition, and believes that the changes proposed by the commenter should undergo public comment before HUD adopts any such change.

Issue: New Definition of ''Release of Funds'' (§ 983.3)

Comment: A commenter stated that the revised ''release of funds'' would allow HUD to issue a release of funds in lieu of use of form 7015.16 (Authority to Use Grant Funds) but stated that form 7015.16 is just one manner in which a release funds can be effectuated. The commenter recommended that the definition be revised to reference solely a ''release of funds'' or ''a release of funds in accordance with [24 CFR] Part 58.'' Another commenter recommended removing the requirement that a specific type of ''Letter to Proceed'' be used, which ''would facilitate PHA and owner efforts to combine project based voucher (PBV) assistance with other forms of HUD funding in one Part 58 clearance.''

HUD Response: The reason for the proposed change was to translate the function of form 7015.16 to actual program operations. The form grants authority to use grant funds. Issuance of a Letter to Proceed more accurately reflects the transaction since Section 8 funding under the voucher program is not provided in grant form.

Issue: Revised Definition of ''Special Housing Type'' (§ 983.3)

Comment: A commenter recommended that, as a conforming change to the rule, HUD remove reference to ''cooperative housing.''

HUD Response: HUD agrees with this comment, and the final rule removes the reference to cooperative housing from the list of housing types inapplicable to the PBV program.

Issue: Adding a Definition of ''Financial Closing'' (§ 983.3)

Comment: A commenter recommended that HUD add a definition of ''financial closing'' in order to bring clarity to when an AHAP should be executed. The commenter stated that typically, an AHAP is executed at the financial closing of the construction financing as a condition of the lenders and investors of the project, who are depending on the commitment of the PBV assistance.'' The commenter recommended the following language: ''A financial closing occurs once all of the construction financing for a project is in place and the legal documentation committing the financing to the project has been executed.''

HUD Response: HUD appreciates the commenter's recommendation to add a definition of financial closing to the PBV definitions. However, HUD believes that such a definition is not one that should be adopted at a final rule stage but should first undergo some measure of public comment prior to adoption.

Issue: Description of the PBV Program & Maximum Amount of PBV Assistance (§§ 983.5, 983.6)

Comment: A commenter stated that the information being sought have long been required in a PHA Annual Plans by way of HUD guidance, and the commenter referenced PIH notice, PIH 2011–54, September 20, 2011. The commenter requested that HUD explain why such information is now being requested as part of this rule. The commenter recommended that § 983.5 be revised to require that a PHA ''include in its PHA plan the projected number of PBV units, their general locations and how project basing would be consistent with the plan.''

Another commenter recommended deleting the language added at § 983.6(d) because the language adds administrative burden and HUD already has appropriate reporting mechanisms in place for PHAs. Additionally, the commenter stated that the collection of information only at the beginning of the PBV program is ineffective and the PHA plan already requires information on PBVs. The commenter recommended that HUD ''amend Part 903 or the Agency Plan template.''

Other commenters recommended that HUD include in the section that the PHA include the required information in the PHA Plan.

HUD Response: HUD agrees that the language as proposed is unclear. HUD is seeking to obtain the information required under § 983.6 prior to the selection of individual PBV proposals. Such information is not collected through any other HUD system, and the collection is necessary to ensure that PHA's are not exceeding the 20 percent statutory limitation on the amount of annual budget authority a PHA may project-base. As such, § 983.6 is revised, at this final rule stage, to require that a PHA submit the requested information to HUD before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2), including information on the impact the selection will have on a PHA's annual budget authority.

Issue: Applicability of Owner Proposal Selection Procedures to Public Housing Revitalization and Replacement Efforts (§ 983.51(b))

Comment: A commenter stated that it supported the change to allow owner selection without a competition in connection with ''public housing improvement, development or replacement efforts.'' The commenter stated it would constitute an ''important administrative streamlining in complex public housing revitalization processes, without appreciatively affecting competitive opportunities for receipt of PBV.''

HUD Response: HUD believes that the commenter misunderstood HUD's intent. Neither the proposed nor this final rule makes the change stated by the commenter. Neither does the rule make changes to the section that prohibits the attachment of PBV assistance to public housing units. The proposed rule simply reiterates the basis for the requirement.

Comment: Commenters recommended dropping ''the requirement that a prior competitive selection process not involve any consideration that the project would receive PBV assistance.'' The commenters stated the language is unclear and creates obstacles for owners. A commenter recommended the language be revised by deleting '', and the earlier competitive selection did not involve any consideration that the project would receive project-based assistance.'' Another commenter stated that this requirement is overly burdensome because it puts ''PHAs and

owners in an untenable position since they cannot compete for vouchers without tax credits and cannot compete for tax credits without PBV assistance.'' The commenter stated if deleting the requirement is not accepted than the language should be limited to instances ''in which points were awarded for the inclusion of such vouchers.''

HUD Response: Deleting the restriction would allow for the inclusion in a competitive selection process that a project will receive PBV assistance prior to an actual PBV selection. HUD believes that accepting the commenters' suggestion would lead to the distortion of both the competitive nature of the PBV program and the legitimacy of the rationale allowing for the selection of units that have undergone other recent legitimate competitive selections. Eliminating the requirement, as suggested, would give an advantage to prospective PBV project owners in the competitive selection upon which a PHA is relying to select units under the PBV program which would result in a HUD program requirement that could possibly taint the outcome of another Federal, State or local housing program. HUD therefore declines the commenters' recommendation to remove the current regulatory language.

Comment: Commenters recommended that HUD ''change the current requirement for a local competitive process in instances where a PHA will attach project-based vouchers to units in which it has an ownership interest as part of an initiative to improve, develop or replace a public housing property or site, provided that the PHA includes the initiative in its PHA Plan.''

The commenters stated that: ''In this narrow circumstance where a PHA desires to control the revitalization or replacement of its public housing through the use of PBVs for its own units, the requirement to conduct a competitive process is unlikely to be cost-effective and will add delay and uncertainty to critical public housing revitalization efforts.'' The commenters specifically recommended providing three options, and suggested the following language for the third option: ''(3) Selection of a proposal without a competitive process for PHA-owned housing as part of an initiative to improve, develop, or replace a public housing property or site.''

HUD Response: HUD appreciates the commenters' recommendation. However, these changes were not offered at the proposed rule stage and HUD believes that they should first undergo public comment before adopting the commenters' suggestions in a rule for effect. HUD, however, will consider the commenter's recommendation if HUD decides to propose a substantive change to the competitive selection requirements in future rulemaking.

Issue: Restrictions on Using PBVs in Public Housing (§§ 983.51(d), 983.54(a))

Comment: Commenters expressed concern and recommend that HUD clarify the current language restricting the use of PBVs in public housing because it could be interpreted to prevent the combining of public housing capital funds (including HOPE VI) with project-based vouchers. The commenters stated that the current language is contrary to the goal of preservation and believes that this was not HUD's intended outcome.

A commenter recommended that the existing regulation be revised to prohibit the use of PBV assistance with units that receiving public housing operating funds only, revise the final sentence of § 983.51(e) to read as follows: ''Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds.;'' and revise § 983.54(a) to read as follows: ''Units receiving public housing operating funds.''

HUD Response: HUD appreciates the commenters' concern, however, the concern has been previously addressed by the Department in the 2005 PBV Final Rule, 70 FR 59892, 59900. The Proposed Rule and this Final Rule simply restate HUD's longstanding legal interpretation on using project-based voucher assistance in public housing units. Therefore, as stated in the 2005 PBV Final Rule, HUD reiterates that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the 1937 Act. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate fiscal year (FY) 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-ration must occur. For example, if a project receives $2,000 in non-public housing HOPE VI funds and $1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program.

Issue: New Language Allowing PHAs Greater Flexibility (§ 983.51)

Comment: A commenter recommended that HUD add a paragraph (g) to this section that would allow the number of ''units under a HAP contract to be increased up to the number awarded on the proposal selection date without an additional competitive selection'' at any time. The commenter stated that this change will help stabilize projects and provide long-term affordable housing when owners lose units for no fault of their own, including over-income tenants and wrong-sized families, and that the change is crucial because the regulations at § 983.211 and § 983.258 clarify that a unit must be removed from the HAP Contract if a unit is over-income or otherwise not eligible, but § 983.207 only allows the addition of a unit within three years of the execution of the HAP Contract.

Another commenter stated that to the extent that a unit loses subsidy for no fault of the owner, the regulations should clarify that the unit can be included in the HAP Contract upon lease-up of a subsequent eligible resident. The feasibility of projects is based upon the commitment of a certain level of PBV assistance during the full term of the HAP Contract. In order to preserve the affordability of the projects, the PHA must be able to provide the originally committed level of assistance when the amount of subsidy is decreased through no fault of the owner. The commenter recommended the following language ''Once a PBV proposal has been selected pursuant to this section, the PHA may increase the units under the HAP contract up to the number of units originally awarded upon the proposal selection.''

HUD Response: HUD appreciates the commenters' recommendation. However, similar to HUD's response to recommendations to change the procedures governing an owner' proposal selection for public housing revitalization and replacement efforts, HUD believes that these changes should first undergo public comment before adopting the commenters suggestions in a rule for effect. If in a future rulemaking HUD proposes a substantive change to the competitive selection

requirements, the recommendations of the commenters will be considered.

Issue: Subsidy Layering Review Not Required for Existing Housing (§ 983.55)

Comment: A commenter recommended that HUD clarify the change to § 983.55(a) by inserting a period after ''existing housing'' and making the ''nor'' clause into a separate sentence.

HUD Response: HUD agrees with the commenter and the final rule clarifies the sentence as suggested by the commenter.

Issue: Cap on Number of PBV Units in Each Project (§ 983.56)

Comment: Commenters stated that § 983.56 is unclear in regard to the types of units excluded, such as single family project units, and requests clarification in how to apply the 25 percent cap to PBV units in a project. A commenter stated it is unclear ''in the context of a project that may combine multifamily structures with structures containing one or two units. The rule was previously understood to exclude from the general calculation any building of less than four units, and we would suggest clarifying the rule to continue this practice.''

HUD Response: HUD agrees with the commenter and in this final rule does not contain the proposed change to replace the word building with project in § 983.56(b)(1)(i).

Comment: A commenter recommended the following language, ''*Combining exception categories.* Exception categories in a multifamily housing project may be combined, such that excepted units in a single project may include elderly families, disabled families, and families receiving supportive services, or any combination thereof. Additionally a project may include excepted and non-excepted units (i.e., only those units over the 25 percent per-project cap must be excepted units).''

HUD Response: HUD believes the intent of the regulation is adequately discussed in the preamble and does not believe further revision to the proposed regulatory text is necessary.

Issue: Termination of Rental Assistance for Families in ''Excepted'' Properties That No Longer Qualify for Benefits (§§ 983.56(b)(2)(ii)(B)&(C), 983.257(c), 983.261(d))

Comment: Commenters stated that the rule leaves ''unchanged, provisions in three current sections pertaining to project-based units that are ''excepted'' from the 25 percent per-property cap on voucher project basing . . . that requires remaining members of a family that no longer qualifies for elderly or disabled family status to vacate their home.'' Commenters stated that these provisions are contrary to other provisions, such as allowing families to remain in homes at the end of a FSS contract, contrary to VAWA, and contrary to HUD policy, and the commenter, as an example, referenced HUD's policy for allocating VASH vouchers in the event of domestic violence. HUD–VASH Qs and As, No. D.4.''

HUD Response: HUD agrees with the commenters that family members residing in a unit that no longer qualifies for elderly or disabled family status should not be required to vacate the unit under conditions that are beyond the control of the family, and Section II of this preamble advises of the change that HUD is making at this final rule stage to address this concern.

Comment: Commenters stated that the rule requires that to maintain occupancy the occupants must work, a requirement that is counter to the principle that housing should be voluntary, and the commenter references Notice PIH 2011–33, dated as recently as June 24, 2011, which provides that ''Under no circumstance may a PHA terminate assistance from the public housing program as a consequence of unemployment, underemployment, or otherwise failing to meet the work activity requirement for a particular public housing development.''

Commenters recommended that the PBV termination rule be removed or HUD should ''[p]redicate such terminations on the availability of tenant-based vouchers so that a family can move with continued assistance (similar to the policy that applies to over-or under-housed families at § 983.259 and that applies to public housing families at Notice PIH 2011–33); or if the property is partially assisted, allow the family to remain, substituting the housing assistance contract of their unit with another unit, if available, as is currently allowed at § 983.261(d).'' Another commenter stated: ''If the property is fully assisted, allow the family to remain but when the family vacates the new tenant would be subject to the requirements that apply to ''excepted'' units.''

HUD Response: The statutory exception to the 25 percent limitation on dwelling units receiving assistance under a PBV contract specifically requires that families receive supportive services. If a family continues to reside in an excepted unit after failing, without good cause, to complete the service requirement, the unit must be removed from the HAP contract since it only qualifies as an excepted unit if the family is receiving supportive services.

The service requirement is a condition of occupancy of the PBV unit and is a family obligation contained within the Statement of Family Responsibility that must be signed prior to leasing the unit. A family's failure to complete the service requirement, without good cause, is considered a violation of family obligations and grounds for termination from the program.

HUD disagrees that the service requirement is a work requirement. Occupancy in a unit excepted from the 25 percent limitation on PBV units in a family project is not based on employment, but rather the statute provides that the exception is allowed for units leased by families receiving supportive services.

Issue: Environmental Review for Existing Structures (§ 983.58)

Comment: Commenters expressed disagreement with HUD's interpretation of the statutory language (Section 2835(a)(1)(f) of HERA). Commenters stated that the current interpretation renders the HERA provision meaningless. Another commenter stated that ''HERA specifically provided that PHAs would not be required to undertake environmental reviews of an existing structure 'except to the extent that such a review is otherwise required by law or regulation.' '' Other commenters stated that ''HUD should have interpreted the phrase 'otherwise required' as required by a law or regulation related to other funding for the units.''

A commenter stated that HUD's interpretation violates principles of statutory construction by rendering the language superfluous, and HUD's failure to implement the statute accurately has caused PHAs additional administrative burdens, ''particularly for PHAs using Project-Based Vouchers for substantial numbers of existing units on different sites.''

A commenter recommended that HUD replace § 983.58(c), with the following: ''(c) *Existing housing.* Existing housing under this part 983 is exempt from environmental review, unless required by law or regulation related to funding for the units other than PBV assistance. If an environmental review is required, the RE [responsible entity] that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review

under the laws and authorities listed in 24 CFR 58.5.''

HUD Response: Section 2835(a)(1)(F) of HERA adds section 8(o)(13)(M)(ii) to the 1937 Act and specifically relieves PHAs from undertaking any environmental review before entering into a HAP contract for an existing structure, except to the extent such a review is otherwise required by law or regulation. A number of broadly applicable Federal statutes, executive orders, and regulations require environmental reviews of various types to be performed by Federal agencies prior to agency actions, including approving Federal assistance for a project. In the case of Section 8, Section 26 of the 1937 Act provides for the assumption by a state or unit of general local government of these environmental review responsibilities. Contrary to the commenters' insistence that HUD's interpretation of the statute renders it meaningless, Section 8(o)(13)(M)(ii) simply does not relieve a state, unit of general local government, or HUD of these responsibilities to undertake an environmental review of existing projects prior to execution of a HAP, and does not authorize HUD to declare such projects exempt from environmental review.

Comment: A commenter stated that the environmental review should be limited for existing PBV to situations where such review is required by funding sources for the units other than PBV. The commenter stated that this step will eliminate the need for PHA efforts that do not contribute significantly to environmental protection or the well-being of residents, as Congress intended.

HUD Response: Environmental reviews on existing projects are appropriately less extensive than for new construction, and include evaluation of factors such as flood hazards and site contamination that do affect the well-being of residents.

Issue: New Language for PHA Owned Units (§ 983.59)

Comment: A commenter recommends that HUD add language ''to allow PHAs to pass the costs of the PBV program to the owners and remove the requirement that an independent entity must approve a renewal.'' The commenter states that PHAs have actual expenses in providing PBV assistance which are not covered by administrative fees, and that therefore, the ''regulations should make clear that the PHA may pass those costs on to the owner to be paid as operating costs of the project, provided that the payment of the tenant shall not be increased. Additionally, since an independent entity is already approving the amount of assistance and the inspection of units, we do not believe that the independent entity is necessarily best suited to determine the appropriateness of renewals.''

Another commenter suggested that § 983.59(b) be deleted and the following language replace paragraph (d)(1). ''The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services; provided, however, that the PHA may pass such costs on to the owner to be paid as an operating cost of the project.''

HUD Response: The suggested changes involve statutory requirements and therefore cannot be accepted. Section 8(o)(13)(F) of the 1937 Act requires that for PHA-owned housing, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by HUD in the manner provided under section 8(o)(11) of the 1937 Act. Section 8(o)(11) provides that the agency is responsible for payments for determinations made by the unit of general local government or other approved HUD entity.

Issue: Elimination of an Independent Real Estate Appraisal (§ 983.59)

Comment: A commenter stated that the proposal ''to eliminate the current requirement for a real estate appraisal to determine initial contract rents to a Section 8 building owner'' is misguided and HUD provides unsubstantiated evidence for the proposed change. The commenter recommended that the provision be deleted from the final rule and HUD should maintain the appraisal requirement.

Another commenter stated that there are certified appraiser readily available, citing that ''as of December 31, 2011, the number of active real estate appraisers in the U.S. stood at 86,800. Of this figure, approximately 30 percent, or 26,000, are classified as Certified General Real Property Appraisers.'' Another commenter stated that appraisers provide timely services, with research indicating appraisal times have stayed relatively constant, and cost competitive services, reports indicating costs have declined over the years. A commenter recommended that HUD clarify what data or research supports the conclusion that certified appraisers are not readily available, do not provide timely service, and do not provide cost competitive services.

Another commenter stated that ''it is in the best interests of the Department and taxpayers that the contract rents [paid] to building owners be based on *independent* and *objective* market information. This information is best provided by qualified real estate appraisers. Real estate appraisers are trained to provide the information sought by HUD in an objective and independent manner. We believe doing otherwise actually puts the limited funds set aside for Section 8 vouchers at risk.''

HUD Response: Based on the commenter's concerns that rents for PHA-owned units will not continue to be determined through a state-certified appraiser and, therefore, determinations will lose objectivity, HUD believes that the same objective can be achieved through rent reasonableness determinations by an independent entity. This requirement was only administratively imposed and because the same results can be achieved otherwise, HUD is eliminating the requirement as proposed.

Issue: Eliminate Requirement That an Independent Entity Inspecting PHA Units Furnish a Copy of Each Inspection Report to the HUD Field Office (§ 983.103)

Comment: A commenter stated that ''there is no evidence that this paperwork-generating requirement has resulted in better unit conditions.'' The commenter recommends deleting in § 983.103(f)(2) the language: ''and to the HUD field office where the project is located''.

HUD Response: HUD has not proposed a change to § 983.103(f)(2). Nonetheless, to address the commenter's concern, HUD believes there is value in the requirement in that it furthers the statutory intent to provide independent oversight of PHA owned housing in certain areas of program administration.

Issue: Commencement of Construction (§§ 983.152, 983.153)

Comment: Commenters responded to HUD's request for comments on the applicability of the commencement of new construction requirement for projects receiving other federal funds on which construction has already started. Commenters stated that this change would have an impact on all possible new owners that are interested in a PBV property after construction has begun rather than just those receiving other federal funds. A commenter stated ''that it is not uncommon for site preparation to have begun before a developer submits a proposal for funding. The

proposed 'commencement of construction' standard eliminates a funding agency's opportunity to influence a developer to incorporate PBV units into the development after its selection. Beyond foreclosing opportunities to incorporate PBV units into a development, it is not apparent that this definition of commencement of construction serves a useful purpose.'' A commenter recommended that HUD provide ''the greatest flexibility allowed by law for owners and PHAs to enter into AHAPs, even after the proposed definition of 'commencement of construction.' ''

Another commenter stated that it recognized the necessity of complying with NEPA and not commencing work prior to completion of environmental reviews, but stated that it sees ''no other HUD objective served by this rule that could not be accomplished by far less restrictive means.'' Other commenters stated that the complexity of financings and regulatory requirements requires flexibility for developers and finances during the process, especially when a project doesn't initially rely on PBV. A commenter stated that the layering of financing is subject to HUD workload constraints and consequent delays that have severely impacted the ability of projects to meet placed-in-service (PIS) deadlines. Another commenter stated that HUD could require that the environmental review be completed prior to ''early start activities'' and that they are in accordance with other applicable federal requirements, such as Davis-Bacon wage standards and Section 3 hiring requirements, without requiring an executed AHAP contract. The commenter recommended a simple ''certification from the owner (with HUD's standard text regarding potential penalties for false statements) that all work performed prior to AHAP execution has been so performed. If a PHA requests the early release of funding for early start work, HUD may require such a certification at that time.''

Several commenters stated that there seems to be no apparent policy rationale offered for HUD's position and recommended revising § 983.152(a) to allow an exception for extenuating circumstances. Commenters stated that they recognized the need that all part 983 requirements be met, but stated that the PHA can certify to those requirements without HUD concerning itself with the timing of executing the AHAP contract.

A commenter stated that the recommended definition will severely limit the use of the PBV program and ''does not reflect the realities of how the development process works, and is not necessitated by any regulatory requirements.'' Another commenter recommended that HUD tie the execution of the AHAP to the financial closing for the construction or rehabilitation work, provided the PHA has certified the owner has met the other HUD requirements. Specifically, the commenter suggested § 983.152(a) be revised as follows: ''Requirement. The PHA must enter into an Agreement with the owner upon financial closing. The Agreement must be in the form required by HUD'' and that § 983.153(c) be revised to read as follows: ''Prompt execution of Agreement. The Agreement must be executed after the subsidy layering and environmental approvals are received from HUD at financial closing.''

HUD Response: The determination of start of construction is necessary to ensure that units are constructed or rehabilitated in compliance with section 12(a) of the 1937 Act, and Davis-Bacon wage rates, where applicable. The Section 8 program, including the PBV program, is subject to statutory labor standards provisions in Section 12(a) of the 1937 Act. Section 12(a) of the U.S. Housing Act requires the applicability of Davis-Bacon prevailing wages to the development of low-income housing projects containing nine or more Section 8-assisted units, where there is an agreement for Section 8 use before construction or rehabilitation is commenced. HUD's position has long been that once a Section 8 housing project has been initially developed and placed under a HAP contract, a later decision by an owner to repair or rehabilitate the project as it ages does not constitute ''development'' of the Section 8 project and is not subject to Davis-Bacon wage rates. However, construction, including rehabilitation work, performed in connection with the initial placement of a project under a PBV HAP contract constitutes development of the project and is subject to Davis-Bacon wage rates where the project contains nine or more assisted units.

The final rule provides a clear definition of start of construction and rehabilitation, and requires that no construction or rehabilitation can proceed after proposal submission and prior to an AHAP being executed. After AHAP execution all construction and rehabilitation must be carried out in accordance with the AHAP and program requirements which may include Davis Bacon wage requirements.

Issue: Extension of Initial Term (§ 983.205)

Comment: Several commenters expressed disagreement with HUD's interpretation that the PBV contract must end after a 15-year renewal. A commenter stated that HUD's interpretation is contrary to the statute and proposed the limit be for a maximum of 30 years. The commenter stated that the extension contracts need to continue to give homeless people more protection.

Other commenters stated that HUD should comply with the spirit of the original PBV statute which refers to long-term affordability and unlimited number of extensions of the initial HAP contract for up to 15 years. Other commenters stated that continued renewals are extremely important to ensure long-term affordability and is essential to preserving the stock of housing affordability to extremely low income people.

A few commenters stated that the language as written is confusing. The commenters asked ''Is HUD attempting to limit the entire term of the contract to 30 years? In other words, if a PHA provides a 15 year initial HAP contract with an agreement to extend for another 15 years, HUD will disallow any further extensions?''

A commenter stated that it seeks clear language that allows for multiple renewals of 15 year terms so not to lose the already limited inventory of affordable housing to the market.

Other commenters stated that the proposed rule violates the explicit HERA amendment, which permits an advance agreement for a potentially unlimited number of 15-year extensions so long as the property meets HQS and the rents do not exceed applicable limitations. A commenter recommended removing sentences two and three, and replacing sentence one as follows: ''A PHA may agree to enter into *one or more extensions* at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.''

A commenter recommended that HUD remove sentences two and three, and replace the first sentence as follows, ''A PHA at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.''

Another commenter stated that § 983.205(b) should be revised to ''clarify that HAP contracts may be extended for up to 15-year terms, with no stated limit on the number of extensions.''

A commenter stated that the statute gives the PHA the authority to extend the contract ''upon a PHA's informed judgment about what is reasonably appropriate in order to achieve long-term affordability of the housing or to expand housing opportunities.'' The commenter also stated that ''Congress' use of the word ''terms,'' and use of the word ''each'' to modify 15 years, demonstrates that Congress' statutory language in HERA was *not* intended to limit a PHA to extend PBV HAP contracts to a ''term'' of up to 15 years exclusively.

Another commenter recommended removing the language at the end of § 983.205 and using the following language: ''*Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for additional terms of up to 15 years each if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.''

HUD Response: The proposed rule allows for an extension at the beginning of the initial HAP contract term. Essentially, an initial 30-year commitment is permissible at the commencement of the HAP contract provided the PHA is able to make the requisite determination that an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. A 15 year initial term and a 15 year extension is consistent with requirements under LIHTC program under which the project owner must agree to maintain an agreed upon percentage of low income units for an initial 15 year compliance period and subsequent 15-year extended use period. The required LIHTC extended use period ensures that a 15-year PBV extension is appropriate to continue providing affordable housing for low-income families. The HERA amendment, and HUD's reasonable implementation of it, facilitates preservation of affordable housing for the LIHTC compliance period and extended use period. In addition, provided that the PBV program is not repealed, owners and PHAs will have the opportunity at the end of the 30 year period to go beyond 30 years of assistance (HUD uses LIHTCs as an example since LIHTCs are the main source of financing used with PBVs. The Department is not asserting that because the LIHTC period is 30 years, this is dispositive on how long extensions may be). HUD's initial limitation on contract extensions is not intended to bar the possibility for future extensions.

The final rule therefore allows for future extensions at the end of any extension term provided that not more than 24 months prior to the expiration of any extension contract, the PHA agrees to an extension of the term at the end of the previous term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. HUD is, exercising its discretion to establish a reasonable limit on the cumulative term of any contract extension in this manner because HUD believes allowing a PHA and owner to extend a HAP contract for an endless number of terms during the initial HAP contract, as suggested by some commenters, may conflict with the PHA's statutorily required determination that must be made prior to extending the underlying contract both initially and for subsequent extensions.

Issue: Terminating a HAP Contract When a Rent Reduction Falls Below Initial Rent Level (§ 983.205)

Comment: A commenter requested that HUD clarify why it is requiring, given there is no statutory requirement, for ''an owner seeking to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level would be required to provide a notice to the PHA and HUD and seek HUD approval.'' Another commenter stated that the continued allowance that an owner can terminate a contract if a rent reduction is below the initial rent level creates a conflict with § 983.302. The commenter recommended changing § 983.302(c)(2) to include an ''a requirement that the owner accept the regular, tenant-based voucher of a prior PBV tenant. The use of a voucher in the unit would be subject to regular HCV rules of rent reasonableness and HQS compliance. But if an owner opts out of a PBV contract rather than accept a rent reduction, the PHA finds the rent to be reasonable, and the tenant wants to remain and pay the likely additional rent above the PHA payment standard, HUD's rules should encourage such stability.''

HUD Response: The regulation reflects an existing requirement. Under the May 15, 2012, rule, HUD proposed that the owner provide notice to HUD, as well as the PHA, and receive approval from HUD when terminating the HAP contract due to a rent reduction causing rents to fall below the initial rent level. Upon further consideration, HUD withdraws its proposed change and maintains the current regulatory language. A commenter stated that there is a conflict between the existing regulation of allowing the owner to terminate the contract if a rent reduction causes the rent to fall below the initial rent level, and § 983.302. HUD disagrees since in limited circumstances, as enumerated in § 983.302(c)(2) the rent to owner may be required to be reduced below the initial rent (e.g., if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to the prohibition of excess public assistance (see § 983.55)). The commenter also suggests that HUD require an owner to accept a regular voucher when the owner exercises the right to terminate assistance in accordance with (§ 983.205). HUD declines to make the change since HUD does not have the authority to require that an owner accept a voucher.

Issue: Statutory Notice Requirements (§ 983.206)

Comment: Several commenters expressed their support for this provision. Several commenters expressed support for the requirement in § 983.206(b) and (d) that would require owners to provide tenants one-year notice of the owner's intent to terminate a PBV housing assistance payment contract. Certain commenters suggested that the notice be in writing and that the notice require ''owners, after a contract is terminated, to accept any replacement tenant-based assistance provided to residents who had been assisted with PBV.'' Other commenters stated that providing notice to tenants will allow them ''to search for and secure affordable replacement housing.'' The commenters also noted support for (d) that ''ensures that tenants must be able to remain in their units without a rent increase if the owner fails to provide timely notice.''

A commenter recommended replacing the word ''notify'' with ''provide written notice'' in § 983.206(b) and revising § 983.206(d)(1). The commenter suggested that when the owner does not give timely written notice than the owner must permit the tenants in assisted units to remain in their units for the required notice period until one year following the legally required

notice, with no increase in the tenant portion of their rent and with no eviction. This same commenter recommended adding a paragraph (e) stating: ''Following termination of the contract, an owner shall accept any replacement tenant-based assistance provided to assisted tenants in residence at the time of the termination, provided that this requirement shall not limit the reasonable market rent charged by the owner.''

Another commenter requested that HUD reconsider requiring owners to provide notice one year prior to termination because it is not required by the statue and may have disadvantages to residents. The commenter stated that the statute does not require notice for the PBV program when it is tenant-based assistance. Specifically, the commenter noted that ''unlike other project based programs, if the PBV HAP Contract is terminated, each resident would receive a tenant-based voucher to either stay at the project or move to another place of their choice. A year of notice is counter-productive since it causes great concern for the residents, even though their housing assistance is not in jeopardy.'' The commenter recommended that HUD require 60 days' notice and HUD could consider requiring that ''if the Owner will continue to operate the project as rental housing, the tenants may not be evicted except under the terms of their lease.''

HUD Response: HUD appreciates the comments in support of § 983.206, but disagrees with the commenter's that stated that the statutory requirement to provide a one-year notice of termination or expiration does not apply to the PBV program. Section 8(c)(8) applies to project based assistance and Section 8(f) of the statute defines project-based assistance to include assistance provided under Section 8(o)(13) (PBV assistance).

Issue: Recommending a Change to the 3-Year Limit on Adding Units to an Existing HAP Contract (§ 983.207)

Comment: Certain commenters objected to the existing three year limit for a PHA to add units to a HAP contract. The commenters stated that the need to add usually because ''families living in those units were not eligible for the vouchers'' upon execution of the HAP contract. The commenters recommended HUD provide no limit on adding units.

Another commenter requested that HUD clarify § 983.207(d) so ''that the PHA may amend the HAP Contract at any time to add additional units, provided that the total number of units does not exceed the original award/HAP Contract. To the extent those units were part of the initial award, the fact that the contract was terminated with respect to specific units in accordance with 24 CFR 983.211 should not make those units ineligible for assistance provided that future families are eligible for assistance.'' Another commenter recommended amending § 983.207(b) by adding that ''or at any time when a unit that has been occupied by an ineligible family since that execution date becomes occupied by an eligible family'' after the language ''during the three-year period immediately following the execution date of the HAP contract.'' A commenter stated that allowing units to be added after the three years from the initial HAP contract where turnover provides ''would facilitate contract administration, as well as financing when renovations are involved.''

Another commenter stated that being able to add units is important for the feasibility of the project and the PHA should be able to increase the number of units under the HAP contract to the number originally awarded. This same commenter recommended the following language for § 983.207(b): ''*Amendment to add contract units.* At the discretion of the PHA, a HAP contract may be amended to add additional PBV contract units in the same project up to the number of units originally awarded upon the proposal selection. 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.''

HUD Response: HUD appreciates the commenters' recommendation and is providing for the reinstatement of some units to the HAP contract under § 983.211.

Issue: Amendment To Add Contract Units—Clarifying the 25% Per-Project Cap When Adding Units to an Existing HAP Contract (§ 983.207)

Comment: Commenters requested that HUD amend § 983.207(b) to clarify that the HAP can ''assist more than the 25% per-project cap if the assisted units are excepted units in accordance with 983.56.'' A commenter recommended that HUD strike the language and simply require additional units to comply with the regulations in 24 CFR part 983.

HUD Response: HUD agrees with the commenter and the final rule makes this clarification. The rule clarifies that the 25 percent limitation applies unless the units are excepted units pursuant to § 983.56.

Issue: Removal of Units From HAP Contract (§§ 983.211, 983.258)

Comment: A commenter stated that the change proposed to § 983.211 is important, but recommended that HUD ''improve on the proposed rule by allowing a PHA, where there is not another unit that can be substituted to maintain the number of PBV units in the property, to allow the unit to remain under the PBV contract despite the absence of housing assistance payments for the unit. The commenter stated that alternatively, HUD should allow the reduction in units under the PBV contract to be temporary, to enable the original number of PBV units to be restored if a unit becomes vacant and is rented to an eligible family. (A change in § 983.258 also would be required to implement this recommended policy.)''

Another commenter stated that volume for PBVs are governed by budget authority rather than number of units, so ''allowing units with unsubsidized families to remain under HAP contract would facilitate program administration with no negative effects on the program.'' Other commenters stated that HUD's proposal does not provide a return of PBV units to the HAP Contract. The commenters recommended that if units are removed from the HAP contract without fault of the owner, the units should be added back to the HAP contract with no delay when the units are re-released to eligible families.

HUD Response: HUD appreciates the commenters' recommendation and is adopting language that allows for a project that is not partially assisted to re-instate units when an ineligible family vacates and clarifying when a partially assisted unit may substitute a unit in § 983.211. However, the other changes recommended by the commenters should first undergo public comment before being adopted in a rule for effect. HUD will consider such changes in future rulemaking for the PBV program.

Issue: Participant Selection—Preference for People With Disabilities (§ 983.251)

Comment: Commenters stated that the interpretation of § 983.251(d) has been challenging for PHAs and HUD, and that the use of the word ''qualify'' in place of ''need'' in the rule is an improvement in tenant selection preference policies. A commenter stated that PBV can be used to create supportive housing properties or sub-set of units at a property, and the housing could have outside service providers or on-site services provided. Other commenters

recommended that the language be changed to ''(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who qualify for services offered in conjunction with the assisted units, in accordance with the limits under this paragraph. . . .''

HUD Response: HUD appreciates the commenters' feedback and recommendations. As noted earlier in this preamble, the final rule uses the existing codified term ''need'' and does not substitute ''qualify'' for ''need'' based on concern that ''qualify'' may be interpreted in such a way as to exclude tenants eligible for the preference. Further, HUD does not adopt the commenters' phrase of ''services offered in conjunction with the assisted units'' because HUD returns to the existing language ''services offered at a particular project.'' HUD believes the language distinguishing between ''services offered at a particular project and services offered in conjunction with specific units'' may be misinterpreted as more limiting than the existing language.

Issue: Participant Selection—Rescreening (§ 983.251(b))

Comment: Commenters stated that tenants residing at the time of conversion from one form of assistance to PBVs should be exempt from rescreening in fulfillment of ''HUD's duty to minimize displacement in administration of its programs, 42 U.S.C. 5313 note.'' Other commenters recommended adding as the second to last sentence of § 983.251(b) the following language, ''In addition, such families who were recipients of another form of HUD rental assistance at the time of project selection will not be subject to additional elective screening requirements and may be evicted from the property only for good cause in accordance with the lease.''

HUD Response: HUD does not have the statutory authority to eliminate mandatory PHA screening requirements. The issue of permissive screening activities a PHA may engage in is beyond the scope of this rule. Any changes HUD might seek to make in the future would require that such changes be proposed to give interested parties the opportunity to comment.

Issue: Termination of Leases (§ 983.256)

Comment: Commenters stated that the preamble to the proposed rule states the intent is to provide ''a reliable long-term lease for a tenant unless the owner provides *good cause* for termination of the lease or nonrenewal of the lease.'' However, § 983.256(f)(3)(i) of the proposed regulatory text continues to allow an owner to terminate a lease without good cause. Other commenters recommended that HUD revise the language to state ''(i) The owner terminates the lease for good cause.'' A commenter recommended that that language be changed to protect those who may be targeted because of bias. Another commenter recommended that § 983.256 include explicit language stating that a tenancy may only be terminated for good cause.

HUD Response: The PBV regulations at §§ 983.256 and 983.257 must be read in conjunction with the cross-referenced tenant-based regulation (§ 982.310) which only allows termination for good cause. The PBV provision that allowed an owner to renew without good cause, former § 983.257(b)(3), has been removed. Nonetheless, to eliminate the possibility of confusion, the final rule revises § 983.256 to clearly state that an owner may only terminate a lease for good cause during the lease term.

Issue: Overcrowded, Under-Occupied, and Accessible Units (§ 983.260)

Comment: A commenter stated the rule ''states that a PHA must terminate PBV for a family in a wrong-sized unit or in a unit with unneeded accessibility features, while also requiring a PHA to provide continued housing assistance.'' Other commenters requested that HUD clarify by providing guidance regarding the type of assistance that should be offered and suggested adding language stating that ''an appropriate unit must be offered if one is available in the same building or development. If an appropriate unit is not available, a PHA may offer another form of project-based assistance. However, a PHA must always offer tenant-based voucher assistance in addition to project-based assistance, allowing a family to choose the form of assistance.''

A commenter recommended that for families that resided in a unit for at least a year the PHA should be required to offer tenant-based voucher assistance ''and allow the family to choose the form of assistance it will receive. In addition, when a family has received a tenant-based voucher because its PBV assistance is terminated due to unit size or accessibility features, the rule should explicitly require the PHA to help the family find an appropriate unit, consistent with the requirement in 24 CFR § 982.403.'' This same commenter stated that the proposed change is confusing and fails to provide protections for family similar to other HUD project-based rental assistance programs. The commenter requested that HUD use the existing language concerning termination of the ''housing assistance payment'' to prevent confusion that the ''HAP contract'' is being terminated and ''ensure that units are not made unavailable for other families who would be eligible for project-based assistance when a vacating family receives a tenant-based voucher. In addition, the final rule should clarify that such termination should occur only when an available unit has been identified for a family receiving a tenant-based voucher. This change is consistent with the parallel rule in the regular tenant-based program, and is necessary to avoid causing the displaced family to become homeless.

HUD Response: The PBV regulations at §§ 983.260(c)(1) and 983.260(c)(2) are clarified in this final rule to express HUD's intent that if a family does not move out of the wrong-sized or accessible PBV unit by the expiration of the term of the family's voucher (including any extension) or within a reasonable time of the PHA's offer of assistance in accordance with § 983.260(c)(2), the PHA must remove the unit from the HAP contract.

Issue: Suggested Change to Utility Allowance (§ 983.301(f))

Comment: A commenter recommended that HUD revise the RAD program and other preservation conversions that have a PHA utility allowance, but permit the use of property based utility allowances when available. The commenter stated that the rule directs PHAs ''to use their current PHA wide utility allowances for purposes of calculating rents'' which works when PBVs ''are added to a previously unassisted project where the property utility data is not available. However, for properties that have had HUD assistance, it is very likely that the property will have its own utility allowance which is probably more up to date than the PHA allowance and certainly will be reflective of the property.'' Allowing the use of the PHA utility allowance creates a disincentive ''for the property owner to undertake energy efficiency retrofits.''

HUD Response: This rule is limited to revising and updating regulations for the PBV program. Regulations applicable to RAD, which is a demonstration program, are covered by the RAD notices.

Issue: Implementation of the Rent Floor Permissible Rather Than Mandatory (§§ 983.301, 983.302, 983.303)

Comment: Commenters stated that the current language in §§ 983.301 and 983.302 goes beyond the statutory

language of HERA. A commenter stated that HERA explicitly delegated the authority to make the decision about rent floors for a PBV contract to the PHA, and doing so makes good policy sense. For example, the commenter stated that ''It may be important to have such rent security in locations where it could reasonably be expected that rents are volatile and the PBV contract will enable the owner to leverage additional funds for development or rehabilitation. But in other situations, such as where the PBV contract is for existing housing, such rent security could potentially come at the expense of a PHA's ability to assist additional families.'' Other commenters recommended that these two regulatory sections be revised to allow the PHA in its discretion to not reduce the rents below the initial rents, if the contract rents are not reasonable. PHAs need to retain this discretion to weigh the needs of the particular project against other projects.

A commenter requested that HUD make it clear that PHAs could reduce the rent based on the reasons specific in the rule and clarify ''that whether or not the PHA has agreed contractually to not reduce rents below the initial rent, a PHA is not required to reduce PBV rents below the initial rent if the FMR declines by more than 5% or the rent would otherwise exceed 110% of FMR. PHAs should be able to make the decisions of whether to reduce PBV rents when the FMR declines on a case-by-case basis.''

Another commenter suggested that HUD change § 983.301(e) to require that the ''rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent.'' The commenter stated that the statutory language does not require the stipulation in the PBV HAP contract and ''if a PHA chooses to include this stipulation in the PBV HAP contract with the consent of the owner, the language in HERA requires that the provision stipulate the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the PBV assisted unit.''

HUD Response: HUD appreciates the comments received on the implementation of the HERA provision allowing initial PBV rents to be considered the rent floor for purposes of rent adjustments, but HUD disagrees with the commenters' opinion that the statutory provision explicitly delegates the authority to make the decision about rent floors for a PBV contract to the PHA. Congress explicitly delegated certain decisions to PHAs in HERA (e.g., the statute specifically states that the PHA may, in its discretion continue to provide assistance under the contract . . . for a dwelling unit that becomes vacant . . .). In regard to rent adjustments, the statute states, in relevant part, that the contract *may* provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract. Since the HAP contract is a HUD-prescribed form, HUD proposed a reasonable policy to implement the statutory provision. However, while HUD does not agree that the statute explicitly delegates the authority to PHAs, HUD agrees that PHAs are in the best position to make such determinations based on their individual markets, and other local considerations. Therefore, the final rule provides that the PHA may elect, in the HAP contract, to establish that the initial contract rent shall serve as the rent floor. The PBV HAP contract will also be revised.

Issue: Removing Families With Below-Market Rents Who Are Not Receiving PBV Assistance From the Rent Reasonableness Calculation (§ 983.303)

Comment: Commenters stated that HUD has recognized when a housing conversion action takes place, an owner will often not raise rents on existing tenants who are not receiving rental subsidies in connection with the conversion. The commenters suggested adding a new § 983.303(c)(4) stating ''Units in the premises or project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract are not to be taken into consideration for rent reasonableness determinations.''

HUD Response: The commenters are requesting that HUD expand the definition of assisted units for purposes of rent comparability to include units in the project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract. In the very limited cases where a property has undergone a housing conversion action, HUD allows units occupied by tenants on the date of the eligibility event who do not receive vouchers to be considered assisted units if the owner chooses to continue charging below market rents to those families by offering lower rents, rent concessions, or other assistance to those families. These non-voucher families in a housing conversion action are often long-time tenants, many of whom are elderly and who had been paying below market rents prior to the housing conversion action. Considering such units assisted for purposes of rent reasonableness is an exception to the long-standing policy that an assisted unit is a unit that is assisted under a Federal, State, or local government program. However, for rent reasonableness determinations in the Housing Choice Voucher program, including the project-based voucher program, in the case of a family moving into a multifamily property, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying. PHAs should refer to PIH Notice 2011–46 for guidance on rent reasonableness determinations.

IV. Findings and Certifications

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and the rule is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule largely makes conforming amendments to HUD regulations that govern the public and assisted housing programs, for which changes were recently made by the Housing and Economic Recovery Act of 2008. As advised in the November 24, 2008, notice that preceded this rule, the statutory changes made to these programs were largely self-executing, and required only

conforming regulatory amendments. This rule makes those conforming amendments. The statutory changes to the programs, as reflected in the conforming amendments, impose no significant economic impact on a substantial number of small entities. This rule makes other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That FONSI remains applicable to this final rule and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2577–0169. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. In § 5.609, paragraph (c)(14) is revised to read as follows:

§ 5.609 Annual income.

* * * * *

(c) * * *

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

* * * * *

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 3. The authority citation for part 982 continues to read as follows:

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

■ 4. In § 982.507, paragraph (a)(1) and the introductory text to paragraph (b) are revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) Except as provided in paragraph (c) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

* * * * *

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider:

* * * * *

(c) *Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.* (1) *General.* For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in 24 CFR part 92), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) *LIHTC.* If the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the:

(i) Reasonable rent as determined pursuant to a rent comparability study; and

(ii) The payment standard established by the PHA for the unit size involved.

(3) *HOME Program.* [Reserved]

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 5. The authority citation for part 983 continues to read as follows:

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

■ 6. In § 983.2, paragraphs (b)(3), (c)(2)(i), and (c)(7) are revised to read as follows:

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

* * * * *

(b) * * *

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

(c) * * *

(2) * * *

(i) Section 982.310 (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

* * * * *

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

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

■ 7. In § 983.3(b):

■ a. Definitions for ''housing credit agency'', ''partially assisted project,'' ''project'', ''project-based certificate (PBC) program'', and ''release of funds'' are added in alphabetical order;

■ b. The following definitions are revised: ''Excepted units'' ''premises,'' ''qualifying families,'' ''special housing type,'' and ''wrong-size unit''; and

■ c. The definitions for ''partially assisted building'' and ''state certified appraiser'' are removed.

§ 983.3 PBV definitions.

* * * * *

(b) * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

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

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

* * * * *

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

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

* * * * *

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

* * * * *

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

■ 8. In § 983.4, the ''Labor standards'' paragraph is revised to read as follows:

§ 983.4 Cross-reference to other Federal requirements.

* * * * *

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

* * * * *

■ 9. In § 983.5, paragraph (c) is revised to read as follows:

§ 983.5 Description of the PBV program.

* * * * *

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the PHA must notify HUD of its intent to project-base its vouchers, in accordance with § 983.6(d).

■ 10. In § 983.6, paragraph (d) is added to read as follows:

§ 983.6 Maximum amount of PBV assistance.

* * * * *

(d) Before a PHA issues a Request for Proposals in accordance with § 983.51(b)(1) or makes a selection in accordance with § 983.51(b)(2), the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

■ 11. In § 983.9, paragraph (a)(2) is revised and a new paragraph (c) is added to read as follows:

§ 983.9 Special housing types.

(a) * * *

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

* * * * *

(c) *Cooperative housing.* (1) *Applicability of part 983.* Except as provided in paragraph (c)(3) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: §§ 983.256(b) and (c), 983.258 and 983.259 do not apply.

(2) *Applicability of part 982.* (i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) *Assistance in cooperative housing.* Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of 24 CFR 983 apply.

(4) *Rent to owner.* The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with § 983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) *Other fees and charges.* Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

■ 12. In § 983.10, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 983.10 Project-based certificate (PBC) program.

* * * * *

(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, with the following exceptions:

(1) *PBC renewals.* (i) *General.* Consistent with the PBC HAP contract, 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.

(ii) *Renewal of PBC as PBV.* At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605. 982.609 and 982.614).

(ii) *Lead-based paint requirements.* (A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBC program.

(B) 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.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 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.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 applies to the PBC program.

■ 13. In § 983.51:

■ a. Paragraph (a) is amended by removing the term ''building'' and adding in its place ''project'' in the last sentence;

■ b. Paragraph (b)(2) is revised; and

■ c. Paragraph (g) is added to read as follows:

§ 983.51 Owner proposal selection procedures.

* * * * *

(b) * * *

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

* * * * *

(g) Owner proposal selection does not require submission of form HUD–2530 or other HUD previous participation clearance.

■ 14. In § 983.52, paragraph (a) is revised to read as follows.

§ 983.52 Housing type.

* * * * *

(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 units substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

* * * * *

■ 15. In § 983.53 is revised by:

■ a. Adding the word ''and'' after the semicolon in paragraph (a)(5);

■ b. Removing paragraph (a)(6);

■ c. Redesignating paragraph (a)(7) as paragraph (a)(6);

■ d. Removing paragraph (b);

■ e. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively;

■ f. Revising newly redesignated paragraph (b); and

■ g. Adding a new paragraph (d).

§ 983.53 Prohibition of assistance for ineligible units.

* * * * *

(b) *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. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

* * * * *

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

■ 16. In § 983.55, paragraphs (a) and (b) are revised to read as follows:

§ 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. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

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

* * * * *

■ 17. In § 983.56:
■ a. The section heading is revised;
■ b. The word ''building'' is removed and ''project'' is added in its place everywhere it appears in paragraph (a), including the heading of paragraph (a), and in paragraph (b)(1) introductory text, (b)(1)(ii), (b)(2)(i), and (b)(3)(i);
■ c. Paragraph (b)(2)(ii)(A) is revised;
■ d. The reference ''§ 983.261(d)'' in paragraph (b)(2)(ii)(B) is removed and ''§ 983.262(d)'' is added in its place;
■ e. Paragraph (b)(3) is redesignated as paragraph (b)(4), and a new paragraph (b)(3) is added; and
■ f. Paragraph (c) is revised to read as follows.

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

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Elderly and/or disabled families; and/or

* * * * *

(3) *Combining exception categories.* Exception categories in a multifamily housing project may be combined.

* * * * *

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

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

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

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

■ 18. In § 983.58, paragraph (d)(1)(i) is revised to read as follows:

§ 983.58 Environmental review.

* * * * *

(d) * * *

(1) * * *

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds, as defined in § 983.3(b);

* * * * *

■ 19. In § 983.59:
■ a. Paragraph (b)(1) is revised;
■ b. Paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added; and
■ c. Paragraph (d) is revised to read as follows:

§ 983.59 PHA-owned units.

* * * * *

(b) * * *

(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 PBV program requirements;

(2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

* * * * *

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

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

■ 20. In § 983.101, paragraph (b) is revised to read as follows:

§ 983.101 Housing quality standards.

* * * * *

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to § 983.2 are also inapplicable to special housing types under the PBV program.

* * * * *

■ 21. In § 983.152:
■ a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (a) and (d), respectively;
■ b. Newly redesignated paragraph (b) is revised; and
■ c. A new paragraph (c) is added to read as follows:

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

* * * * *

(b) *Requirement.* The PHA must enter into an Agreement with the owner at such time as provided in § 983.153. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(c) *Commencement of construction or rehabilitation.* The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

* * * * *

■ 22. In § 983.153, add introductory text and revise paragraph (c) to read as follows:

§ 983.153 When Agreement is executed.

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

* * * * *

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

■ 23. In § 983.202, paragraph (a) is revised to read as follows:

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

* * * * *

■ 24. In § 983.203, paragraph (h) is revised to read as follows:

§ 983.203 HAP contract information.

* * * * *

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

* * * * *

■ 25. In § 983.205, paragraphs (a) and (b) are revised to read as follows:

§ 983.205 Term of HAP contract.

(a) *15-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 15 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 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with § 983.59.

(b) *Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.

* * * * *

■ 26A. Sections 983.206, 983.207, 983.208, and 983.209 are redesignated, respectively, as §§ 983.207, 983.208, 983.209, and 983.210.

■ 26B. A new § 983.206 is added to read as follows.

§ 983.206 Statutory notice requirements: Contract termination or expiration.

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term ''termination'' means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

(d)(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

■ 27. In redesignated § 983.207, paragraph (b) is revised to read as follows:

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

* * * * *

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

* * * * *

■ 28. In redesignated § 983.210, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

§ 983.210 Owner certification.

* * * * *

(i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.

(j) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

■ 29. A new § 983.211 is added to subpart E to read as follows:

§ 983.211 Removal of unit from HAP contract.

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

(b) If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with paragraph (b) of this section, must be permissible under § 983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA's selection policies.

■ 30. In § 983.251, a new paragraph (a)(4) is added to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

* * * * *

■ 31. In § 983.256, paragraphs (f) and (g) are revised to read as follows:

§ 983.256 Lease.

* * * * *

(f) *Term of lease.* (1) The initial lease term must be for at least one year.

(2) The lease must provide for automatic renewal after the initial term of the lease. The lease may provide either:

(i) For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or

(ii) For automatic indefinite extension of the lease term.

(3) The term of the lease terminates if any of the following occurs:

(i) The owner terminates the lease for good cause;

(ii) The tenant terminates the lease;

(iii) The owner and the tenant agree to terminate the lease;

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

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

§ 983.257 [Amended]

■ 32. In § 983.257, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and amended by removing the word ''per-building'' and adding in its place ''per-project''..

■ 33A. Sections 983.258, 983.259, 983.260, and 983.261 are redesignated as §§ 983.259, 983.260, 983.261, and 983.262, respectively.

■ 33B. A new § 983.258 is added to read as follows:

§ 983.258 Continuation of housing assistance payments.

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

■ 34. In redesignated § 983.260, the word ''building'' is removed and ''project'' is added in its place everywhere it appears in paragraph (b)(2)(i), and paragraph (c) is revised to read as follows:

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

* * * * *

(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 the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(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, and remove the unit from the HAP contract.

■ 35. In redesignated § 983.262, the section heading and paragraphs (b) and (d) are revised and a new paragraph (e) is added to read as follows.

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

* * * * *

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

* * * * *

(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 project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the PHA does not exercise its discretion under paragraph (e) of this section) 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 project in accordance with § 983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contact, the unit must be made available to and occupied by a qualifying family.

■ 36. In § 983.301, paragraphs (d) and (e) are revised to read as follows:

§ 983.301 Determining the rent to owner.

* * * * *

(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 may be determined by the PHA pursuant to paragraph (b) of this section.

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

owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

* * * * *

■ 37. In § 983.302:

■ a. Paragraph (c) is revised to read as set forth below; and

■ b. The reference in paragraph (e)(3) to ''§ 983.206(c)'' is removed and ''§ 983.207(c)'' is added in its place.

§ 983.302 Redetermination of rent to owner.

* * * * *

(c) *Rent decrease.* (1) 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.

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

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

* * * * *

■ 38. In § 983.303, paragraphs (a), (b)(3), and (f)(1) are revised to read as follows:

§ 983.303 Reasonable rent.

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

(b) * * *

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

* * * * *

(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 § 983.59, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

* * * * *

■ 39. In § 983.304, paragraph (e) is revised to read as follows:

§ 983.304 Other subsidy: effect on rent to owner.

* * * * *

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

* * * * *

Dated: June 16, 2014.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–14632 Filed 6–24–14; 8:45 am]

BILLING CODE 4210–67–P

ADMINISTRATIVE GUIDELINES: SUBSIDY LAYERING REVIEWS FOR SECTION 8 PROJECT-BASED VOUCHER HOUSING ASSISTANCE PAYMENTS CONTRACTS AND MIXED-FINANCED DEVELOPMENT

gathering and maintaining the data needed, and completing and reviewing the collection of information.

As HUD is furnishing a significant amount of data directly to the program participants, the burden in completing the Assessment Tool is reduced. Where HUD is not providing data, as noted earlier in this preamble, program participants are required to consider and in some cases utilize available local data and local knowledge. This refers to data already publicly available and reasonably easy to access. This does not refer to obscure data that may not be known or easily found, that requires an independent data or information collection effort such as a local survey, or that requires extensive analytical expertise or staff effort for instance in manipulating data sets or developing a complex methodology for analyzing complex data that may be available. With the data that HUD provides for use with the Assessment Tool supplemented by available local data and local knowledge, HUD does not anticipate the need for any program participant to turn to outside consultants to collect data and conduct the assessment.

In addition, local knowledge may be supplemented with information received through the public participation process. In such cases, program participants retain the discretion to consider data or information collected through this process as well as the manner in which it may be incorporated into the AFH, whether in the Analysis section of the Assessment or in Section III of the AFH with an option to include extensive or lengthy comments in appendices or attachments. In short, the receipt of extensive public comments may require staff effort to review and consider input but would not result in a mandate to incur substantial additional costs and staff hours to do so. To the contrary, the public participation process should be viewed as a tool to acquire additional information to reduce burden.

The Assessment Tool is available at *http://www.huduser.org/portal/affht_pt.html.*

Information on the estimated public reporting burden is provided in the following table:

REPORTING AND RECORDKEEPING BURDEN

CFR Section reference	Number of respondents	Number of responses per respondent	Frequency of response	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
§ 5.154(d) (Assessment of Fair Housing)	* 4,388	1	With each Con Plan or PHA Plan.	200	877,600
Total Burden	.....	.....	.....	.....	877,600

* The number of respondents is based on the number of entities that will complete the version of the Assessment Tool that is the subject of this notice and is designed for use by entitlement jurisdictions other than States and joint submissions by entitlement jurisdictions and public housing agencies (PHAs) that are submitting a joint AFH. Entitlement jurisdictions that would use this template number 1,181. HUD is estimating that half of the PHAs, which number in total 4053, would opt for a joint submission but this estimate, 2026, may be high.

In accordance with 5 CFR 1320.8(d)(1), HUD is specifically soliciting comment from members of the public and affected program participants on the Assessment Tool on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages not only program participants but interested persons to submit comments regarding the information collection requirements in this proposal. Comments must be received by *November 25, 2014* to *www.regulations.gov* as provided under the **ADDRESSES** section of this notice. Comments must refer to the proposal by name and docket number (FR–5173–N–02).

Following consideration of public comments submitted in response to this notice, HUD will submit for further public comment, for a period of 30 days, a version of the Assessment Tool that reflects consideration of the public comments received in response to this notice.

Dated: September 22, 2014.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2014–22956 Filed 9–25–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5417–N–02]

Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This document provides Administrative Guidelines (Guidelines) which qualified Housing Credit Agencies (HCAs) must follow in implementing subsidy layering reviews in accordance with the requirements of the Housing and Economic Recovery Act of 2008 (HERA), in those cases where the HCA elects to conduct the review. In certain instances, described in this notice, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The requirements in this notice do not supersede the subsidy layering requirements of other Federal programs.

This notice sets forth the guidelines for conducting subsidy layering reviews for mixed-finance public housing projects and for newly constructed and rehabilitated structures combining other forms of government assistance with project-based voucher assistance under section 8 of the United States Housing Act of 1937 (1937 Act).

FOR FURTHER INFORMATION CONTACT: Luci Ann Blackburn, Urban Revitalization Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4134, Washington, DC 20410; telephone number 202–402–4190 (this is not a toll free number); or Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202–402–4212 (this is not a toll free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary Chart

The remainder of this notice describes the current requirements regarding subsidy layering reviews for different development scenarios. The current legal requirements and HUD's policy, which are more fully described in this notice, are summarized for ease of reference in the following chart:

Type of project	SLR reviewer	Certification required under section 102(d) of the HUD Reform Act
PBV (without LIHTC), New Project	HUD	Yes.
PBV only (without LIHTC), Existing Project	SL Review not required	No.
PBV with LIHTC	HCA [1] or HUD	If the HCA were to do the review, and the HCA's SL Review took into account proposed PBV assistance, certification would not be required.[2] Otherwise, HUD must certify.
PBV with LIHTC and Mixed Finance	HCA [3] or HUD	Yes.
Mixed Finance without LIHTC	HUD	Yes.
Mixed Finance with LIHTC	HCA [4] or HUD	Yes, by entity performing review.
Mixed Finance with LIHTC/No HCA or HCA declines to do review.	HUD	Yes.

B. The Housing and Economic Recovery Act of 2008 (HERA)

HERA (Pub. L. 110–289, approved July 30, 2008) made numerous revisions to the Section 8 Project-Based Voucher program. On November 24, 2008, at 73 FR 71037, HUD published a **Federal Register** notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That notice provided an overview of key provisions of HERA that affect HUD's public housing programs, and identified those provisions that are self-implementing, requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. That notice also stated that HUD would be issuing implementing guidance on section 8(o)(13)(M)(i) of the 1937Act (42 U.S.C. 1437f(o)(13)(M)(i)), as applicable to newly constructed or rehabilitated housing. (See 73 FR 71039.)

On July 9, 2010, at 75 FR 39561, HUD published a **Federal Register** notice stating the guidelines HCA's must use in conducting subsidy layering reviews for newly constructed and/or rehabilitated structures combining other forms of government assistance with project-based voucher assistance. These notices state that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or local agencies performing subsidy layering reviews for project-based voucher housing assistance payment (HAP) contracts for new construction and rehabilitated projects is not self-implementing. This notice restates and updates these prior notices, including specific guidelines related to subsidy layering and low-income housing tax credit (LIHTC).

C. Rental Housing Policy Alignment

Through the work of the Rental Housing Policy Alignment team, an outgrowth of the Interagency Rental Policy Working Group formed in 2011, various workstreams are currently underway to streamline government oversight and align standards across federal agencies providing funding for affordable rental housing.[5] One of these workstreams is the Subsidy Layering Review group, which seeks to provide a template for agencies within a State to share duties and information related to approval and review of federally-funded affordable housing. A pilot program aiding the signing of Memoranda of Understanding between various State and federal agencies providing affordable housing assistance was conducted successfully across seven states in 2012,[6] and HUD intends to publish a guidebook that will allow all agencies that wish to enter into such an agreement to do so. This notice provides guidance and updates on how and in what situations such agreements can be utilized to reduce the burden of subsidy layering review on government agencies.

D. Section 102 of the HUD Reform Act and Other Authorities

HUD's regulations in 24 CFR part 4 implement section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)) and contain a number of provisions designed to ensure greater accountability and integrity in the way in which HUD makes assistance available under certain of its programs. Section 4.13 of 24 CFR (Limitation of assistance subject to section 102(d)) requires HUD to certify, in accordance with section 102(d) of the HUD Reform Act, that assistance made available by HUD for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. In addition, The Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Multifamily Housing

[1] It should be noted that, at the time of publication of this Notice, HUD is doing the subsidy layering reviews in all types of cases, including in mixed-finance projects with LIHTC.

[2] Even though not required by HERA, HUD in practice requires certifications in these cases.

[3] See footnote 1.

[4] See footnote 2.

[5] See *http://www.whitehouse.gov/blog/2011/02/01/urban-update-aligning-federal-rental-housing-policy.*

[6] See *http://www.huduser.org/portal/pdredge/pdr_edge_featd_article_012612.html.*

Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a ''Subsidy Layering Review'' provision at 42 U.S.C. 3545 note, which states that the subsidy layering requirement for projects receiving assistance under a HUD program and receiving tax credits may be satisfied ''by a certification by a housing credit agency to the Secretary, submitted in accordance with guidelines established by the Secretary, that the combination of assistance within the jurisdiction of the Secretary and other government assistance provided in connection with a property for which assistance is to be provided within the jurisdiction of the Department of Housing and Urban Development and under section 42 of the Internal Revenue Code of 1986 shall not be any greater than is necessary to provide affordable housing.'' This statutory note also sets requirements for equity capital and project costs. Finally, as noted, in 2008, HERA altered some of these subsidy layering requirements.

• Project Based Assistance But No LIHTC

Section 2835 of HERA adds subparagraph (M) to section 8(o)(13) of the U.S. Housing Act of 1937, 42 U.S.C. 1437(o)(13), which provides that a subsidy layering review shall not be required for project-based assistance (1) for an existing structure, or (2) if a subsidy layering review has been conducted by the applicable State or local agency. However, this section does not speak to the case where HUD conducts the review, hence that situation is governed by other applicable law, specifically, section 102(d) of the HUD Reform Act, 42 U.S.C. 3545(d), which requires that the Secretary certify that assistance within the jurisdiction of the Department (except that Title II mortgage insurance for this purpose is not considered such assistance) to any housing project shall not be more than is necessary to provide affordable housing after taking account of assistance described in subsection (b)(1) of this section. Assistance under (b)(1) includes ''any related assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.''

• HUD Assistance Plus LIHTC

As noted, 42 U.S.C. 3545 note provides that an HCA certification submitted in accordance with HUD guidelines will suffice in lieu of a HUD review when HUD assistance and LIHTC are used in a project. Where there is no current delegation of subsidy layering review authority to an HCA, on a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD's review under 42 U.S.C. 3545 note and these guidelines. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA's subsidy layering review as needed. *Id.*

• Mixed-Finance and Public Housing Without LIHTC

It is also possible for mixed-finance arrangements to occur with other forms of federal assistance, but without LIHTC. In regard to such mixed-finance and public housing, the applicable law is again section 102(d) of the HUD Reform Act, and HUD is responsible for performing subsidy layering reviews.

II. Certification

A. HUD's Certification Requirements Pursuant to 102(d) of the HUD Reform Act

HUD's regulation at 24 CFR 4.13 states that before HUD makes any assistance subject to section 102(d), with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies that there are no duplicative government subsidies when combining HUD housing assistance and forms of other federal, State, or local government assistance. Where an HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance, section 2835(a)(1)(F) of HERA eliminates the need for the HUD Reform Act's section 102(d) certification requirement. However, HUD's obligation to certify in accordance with 102(d) of the HUD Reform Act and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this notice.

1. HCA Participation Where LIHTC Administered by the HCA Is Involved

An HCA is ordinarily designated for the purpose of allocating and administering the LIHTC program under section 42 of the Internal Revenue Code (IRC), and so may do the subsidy layering review pursuant to authorization under this notice where there is LIHTC. In those transactions where there are other forms of government assistance involved, as in proposed project-based voucher projects, which do not include LIHTC, and the HCA has no involvement in respect to the assistance, HUD will generally conduct subsidy layering reviews and make the required HUD Reform Act's section 102(d) certification in accordance with 24 CFR 4.13 for such projects as it is currently doing. HUD will also continue to conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

2. HCA Participation Where Other Assistance Administered by the HCA May Be Involved

Currently, transactions involving LIHTC are the only case where the HCA has substantial involvement and, absent a waiver requested by the locality and granted by HUD for good cause, are generally the only case where the HCA performs the subsidy layering review. However, in the future, Congress may appropriate forms of assistance where there is involvement by a local HCA. In those cases, HUD may, by notice published in the **Federal Register**, on such terms and conditions as HUD may provide, and where not contrary to statutory authority, delegate performance of the subsidy layering review to the local HCA.

B. HCA Certification Under HERA

Under section 8 of the 1937 Act, specifically at 42 U.S.C. 1437f(o)(13)(M), the HUD Reform Act section 102(d) certification is not required with respect to project-based assistance, or if a subsidy layering review has been conducted by the applicable HCA. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed by the applicable HCA, the HCA must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B of this notice).

III. Intent To Participate

An HCA must notify HUD of its intent to participate in the preparation of subsidy layering reviews for projects combining other forms of government assistance with project-based voucher assistance before performing subsidy layering reviews pursuant to this notice.

Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

A. Letter to HUD

An interested HCA shall notify HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by sending a brief letter (Appendix A of this notice), executed by an authorized official of the HCA informing HUD that it: (1) Has reviewed these Guidelines; (2) understands its responsibilities under these Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via email to the Section 8 Financial Management Division at HUD Headquarters at the following address: *pih.financial.management.division@hud.gov.*

B. HUD Acknowledgement

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate is acknowledged by HUD through a response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, on behalf of proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

C. Revocation of Participation

If HUD determines that an HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may discontinue the HCA's permission to perform subsidy layering reviews on behalf of proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such a determination.

D. HUD Participation

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HUD Reform Act section 102(d) certification pursuant to such review for projects in cases where: (1) The HCA's authority has been revoked by HUD; (2) an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; (3) project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review; or (4) the project is mixed finance.

E. Applicability

These guidelines apply to any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage that is provided under a program administered by HUD for use in, or in connection with, a specific housing project. Assistance provided under section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is assistance to which section 102(d) of the HUD Reform Act applies for subsidy layering review purposes.

IV. Definitions

Category 1 subsidy layering review—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, with consideration of project-based voucher assistance.

Category 2 subsidy layering review—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA conducts the review, but without consideration of project-based voucher assistance.

Housing Credit Agency (HCA)—For purposes of performing subsidy layering reviews for proposed project-based voucher projects, a housing credit agency includes a State housing finance agency, a participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92), or other State housing agencies that meet the definition of ''housing credit agency'' as defined by section 42 of the Internal Revenue Code of 1986. Any agency for which HUD has previously acknowledged its participation and posted the agency's name on the Office of Public and Indian Housing's Web site as a participating agency prior to the effective date of this notice is also considered to be an HCA for purposes of performing subsidy layering reviews, except where HUD has revoked the HCA's authority to perform subsidy layering reviews.

Mixed-finance development—Mixed-finance development refers to the development (through new construction or acquisition, with or without rehabilitation) or modernization of public housing pursuant to 24 CFR 905.604, where the public housing units are owned in whole or in part by an entity other than a PHA. There are various potential scenarios for the ownership structure of a mixed-finance project, such as: Public housing units may be owned entirely by a private entity; a PHA may co-own with a private entity; or a PHA affiliate or instrumentality may own or co-own the units.

Other government assistance is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

Substantial compliance —For purposes of making the HERA certification, an HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the HCA's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the HCA's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

V. Public Housing Agencies (PHA) Responsibilities

A. When Subsidy Layering Reviews Are Required

When a new construction or rehabilitation project has been selected by a PHA pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance, the PHAs must request a subsidy layering review. As part of the selection process, the PHA must require information regarding all HUD and/or other federal, State, or local governmental assistance to be disclosed by the project owner. Form HUD–2880[7] (Appendix C of this notice) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA must also inform the owner that if any information changes on the disclosure,

[7] See *http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf.*

either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

B. Requesting Performance of Subsidy Layering Reviews

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact its local HUD field office. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to its local HUD field office. The local field office will request HUD Headquarters to conduct the subsidy layering review.

C. Providing Documents Required for Review

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D of this notice. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for quick reference by either HUD or the PHA.

D. Subsidy Layering Review Timing and Outcome

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (e.g., environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of project-based voucher assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA's recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

VI. Subsidy Layering Review Categories—Overview

A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review and Considers Project-Based Voucher Assistance

Section 8(o)(13)(M)(i) of the 1937 Act (42 U.S.C. 1437f(o)(13)(M)(i)), as added by section 2835(a)(1)(F) of HERA, provides that a subsidy layering review in accordance with section 102(d) of the HUD Reform Act is not required if a subsidy layering review has been conducted by a qualified HCA (of course, HUD retains the option to conduct the review itself). Section 42(m)(2) of the IRC (26 U.S.C. 42(m)(2)) mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its section 42(m)(2) review, the HCA considers all federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HUD Reform Act section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), codified at 42 U.S.C. 1437f(o)(13)(M)(i), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over-compensation. HCAs must therefore analyze the operating pro-forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage

ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application for, or award of, LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review if such review substantially complies with the subsidy layering review requirements under this notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this notice, the HCA may make the required certification (Appendix B of this notice) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA cannot make the required certification because the operation pro-forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VIII.B of this notice and, if necessary, reduce the subsidy source within its control (i.e., the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the project's viability without overcompensation. HUD will notify the PHA before any action to reduce the project-based voucher units due to issues of overcompensation.

B. Category 2—Proposed Project-Based Voucher HAP Contracts Where the HCA Conducts the Subsidy Layering Review Without Consideration of Project-Based Voucher Assistance

Where a subsidy layering review has been conducted by an HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (e.g., project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the operational aspects of the project in accordance with Section VIII.B of this notice.

Although project-based voucher projects are exempted from a full subsidy layering review, the HCA must still be able to certify when combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there are any duplicative forms of assistance (i.e., rental assistance from some other state, federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

C. Category 3—Mixed-Finance Public Housing Projects

Under HUD's mixed-finance regulations, subsidy layering review must be conducted by HUD or its designee (e.g., the HCA) pursuant to section 102(d) of the HUD Reform Act (42 U.S.C. 3545(d)). HUD is responsible for subsidy layering reviews for mixed-finance and public housing development projects. On a case-by-case basis, and within its sole discretion, HUD may delegate the subsidy layering review activity to a local HCA subject to HUD's review. In such cases, HUD may request the HCA to make changes to the subsidy layering review or HUD may revise the HCA's subsidy layering review as needed.

VII. Subsidy Layering Review Guidelines—Procedural Description

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review it will follow these Guidelines and use the Subsidy Layering Analysis form (Appendix E of this notice).

A. Maximum Allowable Amounts

Maximum Allowable Amounts are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of project-based voucher assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD, and, where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

B. Safe Harbor Standards

Safe harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional justification and documentation are required.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within Category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; and whether over-head, builder's profit and developer's fee are also within a reasonable range, taking

into account project size, characteristics, locations and risk factors.

VIII. Subsidy Layering Reviews—Guidelines and Requirements

A. Category 1 Subsidy Layering Reviews

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (i.e., maintenance, operational, and replacement reserves) proposed for the project, taking into account project size, project characteristics, project location and project risk factors, as determined by the HCA, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

1. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances, such as market conditions or other circumstances that HUD may determine.

a. Standard (1)

General Condition: safe harbor—six percent (6%) of construction contract amount.

b. Standard (2)

Overhead: safe harbor—two percent (2%) of construction contract amount.

c. Standard (3)

Builder's Profit: safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead, and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than fourteen percent (14%) of the hard construction cost.

d. Standard (4)

Developer's fee: safe harbor—twelve percent (12%) of the total development cost (profit and overhead).

The maximum allowable developer's fee is fifteen percent (15%) of the project costs (profit and overhead).

2. When Development Costs Exceed the Safe Harbor Standard

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

a. HCA Performing Review

In cases where an HCA is performing the review, the HCA must reduce the subsidy source within its control, i.e., the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

b. HUD Performing Review

Where HUD is performing the review and it is determined that, after evaluating allowable sources and uses, the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of project-based voucher assistance.

3. When Development Costs Are Within Safe Harbor

If all safe harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operation's pro-forma before making its LIHTC allocation. If the safe harbor and operational standards (discussed below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

4. Operations Standards

a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro-forma and apply the standards discussed below and contained within the Operations section of Appendix E of this notice. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected DCR over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (i.e., non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending assumptions for their market area.

Generally, operating expenses should be trended at 1 percent to 3 percent per year and rent increases should be trended at 1 percent to 3 percent per year for the first 5 years and 3 percent for each year thereafter. The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VIII.A.4.b of this notice. HUD may adjust these amounts by notice as new data becomes available.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses and amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach. If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for Category 1 projects) or recommend to HUD the appropriate project-based voucher subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total

expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10 percent of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. HUD may adjust this 10 percent standard by notice if new data becomes available.

If the cash-flow is greater than 10 percent of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10 percent of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10 percent of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

B. Category 2 Subsidy Layering Reviews

Category 2 projects shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year operations pro-forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B of this notice). The Operations Standards outlined in section VIII.A.4. of this notice shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate project-based voucher subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

C. Category 3 Subsidy Layering Reviews

Section 35 of the 1937 Act (42 U.S.C. 1437z–7) allows HUD to provide Capital or Operating Funds, or both, to a mixed-finance public housing project. According to the statute, the units assisted with Capital or Operating Funds shall be developed, operated, and maintained in accordance with the requirements of the 1937 Act. The statute permits such projects to have other sources of funding, including private funding and LIHTC funding under the Internal Revenue Code (26 U.S.C. 42).

Regulations related to mixed-finance development are found at 24 CFR 905.604. Pursuant to 24 CFR 905.606 PHAs must submit a development proposal as well as other specific materials and documentation for HUD approval as a precondition to HUD's release of public housing funds for a project's construction. Under 24 CFR 905.610(b), after the PHA submits the evidentiary materials and other documentation required by HUD shall carry out a subsidy layering analysis pursuant to section 102(d) of the HUD Reform Act ''to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account other governmental assistance.'' The subsidy layering review is currently conducted as a part of HUD's review of a development proposal and evidentiary materials and is not designated by HUD to HCAs.

Contents of Subsidy Layering Analysis for Mixed-Finance Projects

The HUD subsidy layering analysis for mixed-finance projects will include the following review:

a. *Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development; Risk Factors.* HUD will review all mixed-finance projects for compliance with HUD's Cost Control and Safe Harbor Standards (revised April 9, 2003), found at: *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9880.pdf.* These standards also contain risk factors for developers with fees above the safe harbor standards.

If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided, as described in the Cost Control and Safe Harbor Standards

b. *Total Development Cost.* HUD will review the total development cost of each mixed-finance development to ensure that public housing funds are not spent in excess of the Total Development Cost (TDC) and Housing Construction Cost (HCC) limits pursuant to § 941.306. PIH Notice 2011–38 or successor notice contains the current TDC and HCC limits for specific jurisdictions, and can be found at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices/2011.*

An automated TDC worksheet can be found at the following Web site on mixed-finance development: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/mfph.*

c. *Pro Rata Test.* To ensure that the amount of public housing funds committed to a project is proportionate to the number of public housing units contained in the project, HUD will conduct a ''Pro Rata Test''. To meet this test, the proportion of public housing funds compared to total project funds committed to a project must not exceed the proportion of public housing units compared to the total number of units contained in the project. For example, if there are a total of 120 units in the project and 50 are public housing units, the public housing units are 42 percent of the total number of units in the project. Therefore the amount of public housing funds committed to the project cannot exceed 42 percent of the total project budget, unless otherwise approved by HUD. However, if public housing funds are to be used to pay for more than the pro rata cost of common area improvements, HUD will evaluate the proposal to ensure that common area improvements will benefit the residents of the development in a mixed-income project.

d. *Net Low-Income Tax Credit Equity.* Projects using LIHTC as part of their financing are reviewed to ensure that the sale of these credits results in an amount of net tax credit equity being invested in the project that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that is not less than 51 cents for each dollar of tax credit allocation awarded to a project. HUD also reviews this net amount to ensure that it represents a market rate of equity, given the current market for the purchase of tax credits. To calculate the discounted net proceeds, HUD reviews the gross syndication proceeds and other expenses relevant to completing the tax credit syndication, compounding the equity installments received prior to the project's Place-in-Service Date and discounting the installments received after this date. If the project receives 51

cents or less or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

For mixed-finance projects that comply with the mixed-finance requirements of this notice, no further subsidy layering analysis will be required. For those projects that fail to comply, PHAs must (i) restructure the project so it complies with the requirements and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the mixed-finance requirements of this notice.

IX. Monitoring

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.
- Whether the values were correctly determined to be inside or outside of the approvable range.
- If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.
- If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: September 22, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A

HCA's Notice of Intent to Participate

[_____, 20__]
U.S. Department of Housing and Urban Development
451 7th Street, SW
Room 4232
Washington, DC 20410
By: Email:
pih.financial.management.division@hud.gov

Re: HCA's Intent To Participate—Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban Development that it intends to conduct Subsidy Layering Reviews pursuant to HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other federal, State, or local assistance does not result in excessive compensation. By signifying our intent to participate, the _____(name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development, and 24 CFR Section 983.55.

The agency understands its responsibilities under the above cited statutes and the Guidelines. The agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent to Participate, the undersign acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or _____(name of agency) informs the HUD, in writing, upon 30 days' notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the _____(name of agency) certifies that, upon HUD approval, the _____(name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:
[UNDERSIGNED NAME AND Title]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Attention of: [NAME], [TITLE]
By Phone—[XXX–XXX–XXXX]
By Fax—[XXX–XXX–XXXX]
By Email—[email address]
[NAME OF Agency]
By:

_____
Name:
Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an email message addressed to Miguel Fontanez at *pih.financial.management.division@hud.gov.* The email message subject line should read ''Submission of Notice of Intent to Participate.''

For questions concerning the submission and receipt of the email please call (202) 708–2934.

Appendix B

HCA Certification

For purposes of the provision of Section 8 Project-Based Voucher Assistance authorized pursuant to 42 U.S.C. section 8(o)(13), section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 Project-Based Voucher Assistance provided by the United States Department of Housing and Urban Development to _____, located in _____ is not more than is necessary to provide affordable housing after taking into account other government assistance.

Name of HCA _____

Printed Name of Authorized HCA Certifying Official _____

Signature of Authorized HCA Certifying Official _____

Date _____

Appendix C

HUD Form 2880

http://portal.hud.gov/hudportal/documents/huddoc?id=2880.pdf

Appendix D

DOCUMENTS TO BE SUBMITTED BY THE PHA TO THE APPLICABLE HCA OR HUD HEADQUARTERS FOR SUBSIDY LAYERING REVIEWS

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, etc. Sources should generally include only permanent financing. If

interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as ''soft costs.'' Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder's profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement. However, proposal letters and letters of intent are not sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the ''as is'' value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an ''as is'' valuation.

6. Stabilized Operating Pro Forma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions, and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at _____ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement.

12. Identity of Interest Statement.

13. PHA commitment letter for project-based voucher assistance.

14. Proposed project-based voucher *gross* rent amounts.

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Appendix E

Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY				Appendix E
Project Name, Sponsor and Phase Information				
Number of units				
SUMMARY: Subsidy Layering Guideline Standards (Note A)	This Project	"Safe Harbor" Standard	"Ceiling" Standard	
1. Builder Profit/General Condition/Over-head		6%,2%,6%	14% Gen Cond + OH&P	
2. Developer Fee		12.0%	15.0%	
3. Net Equity Proceeds		$0.80	Market rate	
4. Debt Coverage Ratio		1.10	1.45	
Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)				
(a) Gross LIHTC Equity Syndication Proceeds from Investor				
(b) Equity Proceeds Not Available for Project Uses				
(i) Bridge Financing Costs (on loans to be repaid by equity) **(Note A)**				
(A) Bridge loan interest				
(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)				
(ii) Other Syndication Fees and Expenses **(Note B)**				
(A) Ownership entity organizational and legal cost				
(B) Syndication fees paid from gross syndication proceeds				
(C) Tax credit fees (to LIHTC-awarding agency, etc.)				
(D) Other syndication fees and costs (accounting, cost certification, etc.)				
(E) Total deductions from equity syndication proceeds				-
(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project				
(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))				
(ii) Enter amount of annual tax credit allocation (from tax credit award letter):				
(iii) Multiply by 10 (LIHTC award amont is annual allocation per year for 10 years		X	10	
(iv) Equals total LIHTC allocation to project over 10 years:			$ -	
(v) Multiplied by investor's ownership percentage:		X		
(vi) Equals LIHTC allocation to the investor:				
(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =				
Calculation of Debt Coverage Ratio (guideline standard 4)				
(a) Net Operating Income				
(i) Total Operating Income				
(ii) minus Total Operating Expenses				
(iii) Equals NOI				
(b) Debt Coverage Ratio				
(i) Debt Service				
(II) Net Operating Income (4.(a)(iii) above) divided by Debt Service equals DCR:				
(c) Cash Flow				
(i)Annual Reserve contributions				
(ii) Cash Flow (4.a.iii minus 4.b.i minus 4.c.i)				
(iii) Cash Flow as a percentage of Expenses (4.c.ii divided by 4.a.ii)				

Notes:

A. Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).

B. Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include only those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.

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Appendix F

SOURCES AND USES STATEMENT

(Sample Format)

SOURCES:

Debt Sources:

Mortgage—
Loans—
Other Loans (specify)—
Other (Specify)—

Equity Sources:

Grants available for project uses—
Estimated Net Syndication Proceeds—
Additional Owner Equity Necessary [8]—
Other Equity Sources (specify)

Total Sources: $_____

PROJECT USES:

Mortgage Replacement Cost Uses—
Total Land Improvements—
Total Structures—
General Requirements—
Builder's General Overhead—
Builder's Profit [9]—
Architects' Fees—
Bond Premium—
Other Fees—
Construction interest—
Taxes—
Examination Fee—
Inspection Fee—
Financing Fee—
FNMA/GNMA Fee—
Title & Recording—
Legal—
Organization—
Cost Certification Fee—
Contingency Reserve (Sub Rehab)—
BSPRA/SPRA (if applicable)—
Acquisition Costs—

SUBTOTAL MORTGAGEABLE REPLACEMENT COST USES*$*

Non-Mortgage Uses:
(i.e. Uses Payable by Sources Other than the Mortgage) [10]

Working Capital Reserve or [11]—
Operating Deficit Reserve [12]—

SUBTOTAL NON-MORTGAGEABLE USES—*$*

TOTAL PROJECT USES*$*

Estimated Net Syndication Proceeds:

The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.

Total Tax Credit Allocation—*$*
Estimated Gross Syndication Proceeds—*$*

Syndication Expenses:
Accountant's Fee—*$*
Syndicator's Fee—*$*
Attorney's Fee [13]—*$*
HCA Fee—*$*
Organizational Expense [14]—*$*
Other (Specify)—*$*
Subtotal Syndication Expenses—*$* [15]

Bridge Loan Costs less Interest (if applicable)—*$*

Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)—*$*

Total Reductions from Gross—*$*
Estimated Net Syndication Proceeds—*$*

[FR Doc. 2014–22971 Filed 9–25–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N201; FXIA16710900000–145–FF09A30000]

Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with marine mammals. We issue these permits under Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
05664B	Bristol Bay Native Association	78 FR 50083; August 16, 2013	September 10, 2014.
166346	Matson's Laboratory	79 FR 35375; June 20, 2014	September 5, 2014.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike,

[8] This line may be used for the additional amount needed from the owner to balance sources against uses when no additional monies are available from other sources.

[9] Builder's Profit for non-Identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgage Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

[10] Note that syndication expenses are included below in the estimation of *Net* tax credit proceeds for this Statement, and therefore, are not included within this Statement.

[11] Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

[12] Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

[13] Such fees may not duplicate legal nor title work charges already recognized. Therefore, only fees associated with the additional legal service associated with LIHTC projects should be recognized here by the HCA.

[14] Such expenses may not include Organizational expenses which are already included, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

[15] See Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–16707 Filed 7–8–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet by teleconference on August 2, 2010.

DATES: The teleconference will take place Monday, August 2, 2010, from 10 a.m. to 12 p.m., e.s.t. Comments must be submitted by July 30, 2010.

ADDRESSES: Members of the public who wish to obtain the call-in number, access code, and other information for participation in the public teleconference should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010, as the number of teleconference lines is limited and available on a first-come, first served basis. Members of the public may also participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Written material as well as requests to have written material distributed to each member of the committee prior to the meeting should reach Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by July 30, 2010. Comments must be identified by docket ID FEMA–2008–0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FEMA–RULES@dhs.gov.* Include the docket ID in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail:* Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the docket ID for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447–1117, fax (301) 447–1173, and e-mail *teressa.kaas@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Fire Academy Board of Visitors will be holding a teleconference for purposes of reviewing National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the Academy update, Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the teleconference in a way that will, in her judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: June 28, 2010.

Denis G. Onieal,

Acting Deputy United States Fire Administrator, United States Fire Administration, Federal Emergency Management Agency.

[FR Doc. 2010–16704 Filed 7–8–10; 8:45 am]

BILLING CODE 9111–45–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5417–N–01]

Administrative Guidelines; Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This document provides Administrative Guidelines which qualified Housing Credit Agencies (HCAs) as defined under Section 42 of the Internal Revenue Code of 1986 (IRC), must follow in implementing subsidy layering reviews in accordance with the requirements of Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA). In certain instances, described below, HUD will follow these Guidelines in implementing subsidy layering reviews to satisfy the requirements of Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act or HRA). The requirements in this Notice, which implement the requirements of Section 2835(a)(1)(M)(i) of HERA, do not supersede the subsidy layering requirements of other Federal programs.

Section 102(d) of the HUD Reform Act was enacted to ensure that Housing projects receiving HUD assistance do not receive excessive compensation by combining various forms of HUD program assistance with assistance from other Federal, State, or local agencies (other Government Assistance). Section 2835 (a)(1)(F) of HERA provides that for project-based voucher housing assistance payments (HAP) contracts for existing housing, a subsidy layering review in accordance with section 102(d) of the HRA shall not be required. Under HERA, when project-based voucher assistance is proposed for newly constructed and rehabilitated structures, subsidy layering reviews may be satisfied if the applicable State or local agency has conducted such a review. HUD has defined these agencies to be qualified housing credit agencies (HCA), which may include State housing finance agencies, participating jurisdictions under the HOME program, or other State housing agencies that meet the definition of a HCA as defined under Section 42 of the IRC of 1986.

This Notice sets forth the guidelines HCAs must use in conducting subsidy layering reviews for newly constructed and rehabilitated structures combining

other forms of government assistance, and Section 8 project-based voucher assistance.

FOR FURTHER INFORMATION CONTACT: Michael Dennis, Deputy Director, Office of Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4228, Washington, DC 20410; telephone number 202–402–3882 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Housing Economic Recovery Act of 2008

HERA (Pub. L.110–289) was enacted July 30, 2008. HERA made numerous revisions to the Section 8 project-based voucher program. On November 24, 2008 (73 FR 71037), HUD published a **Federal Register** Notice to provide information about HERA's applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs. That Notice provides an overview of key provisions of HERA that affect HUD's public housing programs, and identifies those provisions that are self-implementing requiring no action on the part of HUD for participants to commence taking action to be in compliance, and those provisions that require implementing regulations or guidance on the part of HUD. The November 24, 2008, Notice states that the HERA provision relating to the elimination of subsidy layering reviews for existing housing is self-implementing; the provision relating to State or Local agencies performing subsidy layering reviews for project-based voucher HAP contracts for new construction and rehabilitated projects is not self-implementing. The Notice states that guidance on how such reviews must be conducted would be forthcoming and this Notice provides such guidance.

B. Section 102 of the HUD Reform Act of 1989

24 CFR part 4 implements section 102 of the HRA, (42 U.S.C. 3545) and contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Section 4.13 of 24 CFR requires HUD to certify, in accordance with section 102(d) of the HRA, that assistance made available by the Department for a specific housing project will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources. In order to make that certification, a subsidy layering review must be performed. HERA eliminates the certification requirement of 24 CFR 4.13 for new construction and rehabilitated housing under the project-based voucher program where the applicable State or local agency has performed a subsidy layering review. Certification under section 102(d) of the HRA is still required, however where HUD conducts the review.

C. Section 911 of the Housing Community Development Act of 1992

Section 911 of the Housing Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCDA), allows State HCAs to perform subsidy layering review certifications to satisfy the requirements of section 102(d) of the HRA for projects utilizing or expecting to utilize low-income housing tax credits (LIHTCs). To date, however, the Department has not delegated its authority to HCAs for subsidy layering reviews required for covered projects receiving Section 8 project-based vouchers. While Section 911 of the HCDA is a discretionary provision that PIH has not implemented for projects receiving project-based voucher assistance, section 2835(a)(1)(F) of HERA is mandatory and shall be satisfied pursuant to HERA and these Administrative Guidelines, instead of Section 911.

II. Certification

A. HUD's Certification Requirements Pursuant to 102(d) of the HUD Reform Act

24 CFR 4.13 states that before HUD makes any assistance subject to the subpart available with respect to a housing project for which other government assistance is, or is expected, to be made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance. This review certifies no overlap of government subsidies when combining HUD housing assistance and forms of other Federal, State or local government assistance. Where a HCA has performed a subsidy layering review for a project that has been allocated LIHTCs and the subsidy layering review took into consideration the proposed project-based voucher assistance, section 2835(a)(1)(F) of HERA eliminates the need for the HRA section 102(d) certification requirement. However, HUD's obligation to certify in accordance with 102(d) of the HRA and implementing regulations at 24 CFR 4.13 still exists where a review has not been substituted in accordance with the Guidelines contained in this Notice.

In addition, since a HCA is designated for the purpose of allocating and administering the LIHTC program under section 42 of IRC, and there will be cases where there are other forms of government assistance involved in proposed project-based voucher projects that do not include LIHTC, in those cases where the HCA is not able to conduct such reviews, HUD will conduct subsidy layering reviews and make the required HRA section 102(d) certification in accordance with 24 CFR 4.13 for such projects. HUD will also conduct the review where there is no HCA available, or the applicable HCA has declined to perform the subsidy layering review.

B. HCA Certification Under HERA

With the enactment of HERA, a HRA section 102(d) certification is not required by the applicable HCA performing the review. These Guidelines require that HCAs make an initial certification to HUD when the agency notifies HUD of its intent to participate. The HCA certification provides that the HCA will, among other things, properly apply the Guidelines which HUD establishes. In addition, after a subsidy layering review has been performed or where one has already been performed, HCAs must certify that the total assistance provided to the project is not more than is necessary to provide affordable housing (Appendix B).

III. Intent To Participate

A HCA must notify HUD of its intent to participate before any subsidy layering reviews are performed pursuant to this Notice. Questions or requests for clarification relating to subsidy layering reviews for units under the project-based voucher program and the implementation of these Guidelines should be addressed to HUD Headquarters, Section 8 Financial Management Division, and should be answered prior to an HCA's notification to HUD of its intent to participate.

A. Letter to HUD

An interested HCA must apprise HUD of its intent to perform subsidy layering reviews for newly constructed and rehabilitated projects that will receive project-based voucher assistance by

sending a brief letter (Appendix A), executed by an authorized official of the HCA informing HUD that it (1) has reviewed these Administrative Guidelines; (2) understands its responsibilities under these Administrative Guidelines; and (3) certifies that it will perform the subsidy layering review as it relates to project-based voucher assistance in accordance with all statutory, regulatory and Guideline requirements. Such letters should be forwarded via e-mail to the Section 8 Financial Management Division at HUD Headquarters at the following address: *pih.financial.management.division@hud.gov.*

B. HUD Acknowledgement

Once HUD has been notified of an HCA's intention to participate, HUD will acknowledge that participation by a written letter to the HCA, and post the agency's name on the Office of Public and Indian Housing's Web site as a participating agency. Once an HCA's intent to participate has been acknowledged by HUD through the response letter, that agency may perform subsidy layering reviews, and certify such reviews have been performed, for proposed project-based voucher HAP contracts for newly constructed or rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines.

C. Revocation of Participation

If HUD determines that a HCA has failed to substantially comply with these Guidelines, or statutory or regulatory requirements, HUD may revoke the HCA's authority to perform subsidy layering reviews for proposed project-based voucher HAP contracts. HUD will inform the HCA in writing of such determination.

D. HUD Participation

HUD will follow these Guidelines in conducting the required subsidy layering reviews, and issue a HRA section 102(d) certification pursuant to such review, for projects in cases where the HCA's authority has been revoked by HUD; in cases where an HCA opts to not accept the responsibilities pursuant to section 2835(a)(1)(F) of HERA; and in those cases where project-based voucher assistance is combined with other government assistance that does not include LIHTCs, and the HCA does not have the authority to conduct such review.

IV. Definitions

Category 1 Subsidy Layering Review—Subsidy layering review for proposed project-based voucher HAP contracts where the HCA will conduct the review and it will consider project-based voucher assistance.

Category 2 Subsidy Layering Review—Proposed project-based voucher HAP contracts where a subsidy layering review has been performed by an HCA without consideration of project-based voucher assistance.

Covered Assistance and Affected HUD Programs includes any contract, grant, loan, cooperative agreement or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. Assistance provided under Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (project-based vouchers) for new construction or rehabilitated projects is considered "covered assistance" under section 102(d) of the HRA for subsidy layering review purposes.

Other government assistance is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

Substantial Compliance—For purposes of making the HERA certification, a HCA may perform subsidy layering reviews for proposed project-based voucher HAP contracts for newly constructed and rehabilitated units in accordance with the Agency's existing requirements, provided such requirements are in substantial compliance with these Guidelines. To be in substantial compliance, the Agency's guidelines shall be at least as stringent as these Guidelines, and require equivalent disclosures from the ownership entity.

V. Public Housing Authority (PHA) Responsibilities

A. When Subsidy Layering Reviews Are Required

PHAs must request a subsidy layering review when a new construction or rehabilitation project has been selected pursuant to program regulations at 24 CFR part 983 and the project combines other forms of governmental assistance. As part of the selection process, the PHA must require information regarding all HUD and/or other Federal, State or local governmental assistance to be disclosed by the project owner. Form HUD–2880 (Appendix C) may be used for this purpose, but is not required. The PHA must also instruct the owner to complete and submit a disclosure statement even if no other governmental assistance has been received or is anticipated. The statement must be submitted with the owner's application for project-based vouchers. The PHA must also inform the owner that if any information changes on the disclosure, either by the addition or deletion of other governmental assistance, the project owner must submit a revised disclosure statement. If before or during the HAP contract, the owner receives additional HUD or other governmental assistance for the project that results in an increase in project financing in an amount that is equal to or greater than 10 percent of the original development budget, the Owner must report such changes to the PHA and the PHA must notify the HCA, or HUD (if there is no participating HCA in their jurisdiction), that a further subsidy layering review is required.

B. Requesting Performance of Subsidy Layering Reviews

The PHA must request a subsidy layering review through the participating HCA. A list of participating HCAs will be posted on HUD's Office of Public Housing's Web site and updated periodically. If an HCA is not designated in the PHA's jurisdiction, the PHA should contact the Office of Public Housing and Voucher Programs, Financial Management Division. The PHA will be informed if there is in fact an HCA in their jurisdiction that will conduct the review or if the PHA must submit the required documentation to HUD Headquarters for the subsidy layering review.

C. Providing Documents Required for Review

The PHA is responsible for collecting all required documentation from the owner. The documentation required is contained within Appendix D. The PHA is also responsible for providing the HCA with all documents required for the subsidy layering review. The documents must be forwarded to the HCA with a cover letter. If the initial submission to the HCA is incomplete, the HCA is in need of further documentation, or if new information becomes available, the PHA must provide the documentation to the HCA during the review process.

The PHA should contact the HCA to determine whether any documents the PHA is required to provide are already in the possession of the HCA. If the most recent copies of documents the PHA has collected from the owner are already in the HCA's possession, the PHA must state in its cover letter to the HCA which documents are not included because the HCA has informed it that the documents are already in the HCA's possession. The PHA must still maintain a complete set of the required documents with the project file for

quick reference by either HUD or the PHA.

D. Subsidy Layering Review Timing and Outcome

In accordance with program regulations at 24 CFR 983.55, a PHA may not provide project-based voucher assistance until after the required subsidy layering review has been performed in accordance with these Guidelines. Therefore, before entering into an Agreement To Enter into Housing Assistance Payments Contract (AHAP), the PHA must await the outcome of the subsidy layering review. All other pre-AHAP requirements must also be satisfied before AHAP execution (*e.g.,* environmental review). If the HCA with jurisdiction over the project has conducted the subsidy layering review, the HCA must certify to HUD that the project-based voucher assistance is in accordance with HUD subsidy layering requirements. The HCA must provide a copy of the certification to the PHA to signify to the agency that the subsidy layering review has been completed and a determination has been made that the project-based voucher assistance does not result in excessive government assistance. The PHA may proceed to execute an AHAP at that time.

If the subsidy layering review results in excessive public assistance, the HCA will notify HUD, in writing, with a copy to the PHA, of the outcome. The notification will include either a recommendation to reduce the LIHTC allocation, proposed amount of PBV assistance, or other assistance, or a recommendation to permanently withhold entering into an AHAP for the proposed project. HUD will consult with the HCA and the PHA prior to issuing its final determination either adopting the HCA' s recommendation or revising the recommendation. Once the PHA receives HUD's final decision, the PHA must notify the owner in writing of the outcome.

If HUD conducts the review, HUD is responsible for making the required HRA section 102(d) certification pursuant to 24 CFR 4.13. If it is determined that the project-based voucher assistance does not result in excessive government subsidy, HUD will notify the PHA in writing. If it is determined that combining housing assistance payment subsidy under the project-based voucher program with other governmental assistance results in excessive public assistance, HUD will require that the PHA reduce the level of project-based voucher subsidy or inform the owner that the provision of project-based voucher assistance shall not be provided.

VI. Subsidy Layering Review Categories—Overview

A. Category 1—Proposed Project-Based Voucher HAP Contracts Where the HCA's Subsidy Layering Review Includes Proposed Project-Based Voucher Assistance

Section 2835(a)(1)(F) of HERA provides that a subsidy layering review in accordance with section 102(d) of the HRA is not required if a subsidy layering review has been conducted by a qualified HCA. Section 42(m)(2) of the IRC mandates that HCAs ensure that the amount of housing tax credit awarded to a project is the minimum amount necessary for the project to be placed-in-service as affordable rental housing. As part of its Section 42(m)(2) review, the HCA considers all Federal, State, and local subsidies which apply to the project. In making the determination that the LIHTC dollar amount allocated to a project does not exceed the amount the HCA determines is necessary for the financial feasibility of the project, the HCA must evaluate and consider the sources and uses of funds and the total financing planned for the project, the proceeds expected to be generated by reason of the LIHTC, the percentage of the LIHTC dollar amount used for project costs, and the reasonableness of the developmental and operational costs of the project. The subsidy layering review Guidelines under this Notice are similar to those required under the IRC section 42(m)(2) review.

The amendment made to the requirements of HRA section 102(d) pursuant to section 2835(a)(1)(F) of HERA (for purposes of project-based voucher assistance), alleviates the duplication of subsidy layering reviews (that consider the same factors for the same reasons) by both HUD and HCAs. The only other review element that an HCA must consider with the addition of project-based voucher assistance to a proposed project, is the effect the operational support provided by the project-based vouchers will have on the HCA's analysis in regards to the level of subsidy required to make the project feasible without over compensation. HCAs must therefore analyze the operating pro forma that reflects the inclusion of the project-based voucher assistance as part of the subsidy layering review process. The operational support analysis will consider the debt coverage ratio (DCR) and the amount of cash-flow generated by an individual project to determine if excess funding exists within the total development budget.

In light of the above, when a proposal for project-based voucher assistance is contemporaneous with the application for or award of LIHTCs, the subsidy layering review required by these Guidelines may be fulfilled by the IRC section 42(m)(2) review, if such review substantially complies with the subsidy layering review requirements under this Notice. The Department expects that in most cases it will. If the IRC section 42(m)(2) review substantially complies with the requirements of a subsidy layering review under this Notice, the HCA may make the required certification (Appendix B) to HUD without conducting an additional subsidy layering review pursuant to these Guidelines. If the HCA can not make the required certification because the operation pro forma was not reviewed as part of its IRC section 42(m)(2) review in the manner required by these Guidelines, the HCA must perform the limited review as described in section VII. B. of this Notice, and if necessary reduce the subsidy source within its control— (*i.e.,* the total tax credit allocation amount) or promptly notify HUD of a recommendation to reduce the project-based voucher units or subsidy.

Where HUD conducts the review, for the reasons previously stated, in addition to evaluating the operational budget, HUD must analyze whether certain development costs (specifically general condition, over-head, profits, and developer's fee) are or were excessive. If it is determined that such costs are excessive, HUD will reduce the amount of project-based voucher assistance to a level that will sustain the projects viability without overcompensation. HUD will notify the PHA before any action to reduce the project based vouchers units due to issues of overcompensation.

B. Category 2—Proposed Project-Based Voucher HAP Contracts Where Subsidy Layering Review Has Been Performed by Qualified HCA Without Consideration of Project-Based Voucher Assistance

Where a subsidy layering review has been conducted by a HCA on a proposed project-based voucher project for purposes of allocating LIHTCs which may have also included other forms of government assistance, but such review did not consider project-based voucher assistance (*e.g.,* project-based vouchers were obtained subsequent to the LIHTC allocation), the HCA may conduct a limited review with an emphasis on the operational aspects of the project in accordance with Section VII. B. of these Guidelines.

Although project-based voucher projects under Category 2 must undergo a limited subsidy layering review, the HCA must still be able to certify when

combining HUD and other governmental assistance, including project-based voucher assistance, that the project is not receiving excessive compensation. The HCA will be able to make this certification if the review performed as required by section 42(m)(2) of the IRC substantially complied with these Guidelines. In addition to ensuring there is no excessive subsidy, the review must also consider whether there is any duplicative forms of assistance (*i.e.,* rental assistance from some other State, Federal or local source). If it is found that there is duplicative rental assistance for the same unit, the unit does not qualify for project-based voucher assistance, and the HCA must apprise the PHA of such finding. For purposes of this analysis, LIHTC units are not considered duplicative rental assistance.

VII. Subsidy Layering Review Guidelines—Procedural Description

Subsidy layering reviews are required prior to the execution of an AHAP for new construction and projects that will undergo rehabilitation, if the project combines project-based voucher assistance with other governmental assistance. When an HCA has conducted a subsidy layering review in connection with the allocation of LIHTC, the standards used by the HCA must substantially comply with these Guidelines. When HUD is conducting the subsidy layering review, it will follow these Guidelines and use the Subsidy Layering Review Analysis form (Appendix E).

A. Category 1 Subsidy Layering Reviews

For Category 1 projects, HCAs will review all proposed sources and uses of funds. HCAs will also consider all loans, grants, or other funds provided by parties other than HUD and will assess the reasonableness of any escrow or reserve (*i.e.,* maintenance, operational, and replacement reserves) proposed for the project, even if such reserves do not affect the amount of subsidy allowed under applicable program rules.

1. Development Standards—In General

a. Safe Harbor

Safe Harbor standards are generally applicable development standards. Although the safe harbor standards can be exceeded under certain circumstances, projects for which the owner's documented development costs and fees are within the safe harbor standards can move forward without further justification. If any of the owner's costs and/or fees exceed the safe harbor limits, but are within the maximum allowable amount, additional justification and documentation are required.

b. Maximum Allowable Amounts

Maximum Allowable Amounts by comparison are those that cannot be exceeded under any circumstances. If values provided by the project owner exceed the maximum allowable amounts, reductions must be made in either the proposed amount of PBV assistance, or the LIHTC equity to bring the values below the maximum allowable amounts before the HCA can make its certification to HUD and where HUD is performing the review, before the HRA section 102(d) certification can be made. In the case of LIHTC syndication proceeds, if the values provided by the project owner are lower than the minimum LIHTC price, the PHA shall not enter into an AHAP with the owner unless the LIHTC allocation is reduced to bring the value of the tax credits at or above the minimum LIHTC price.

Between the safe harbor standard and the maximum allowable amounts for each of the factors considered in the review is a range in which values may be acceptable if, in the opinion of the reviewer, they are justified based on project size, characteristics, location, and risk factors. Additional documentation must be requested from the project owner that demonstrates the need for values that exceed the safe harbor standards. If the review is being conducted by an HCA, instead of HUD, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan. Under no circumstances may costs exceed the total maximum allowable amounts.

For all projects falling within category 1, the reviewer (either an HCA, or HUD) must evaluate development costs to determine whether pre-development cost associated with the construction of the project is within a reasonable range, taking into account project size, characteristics, locations and risk factors; whether over-head, builder's profit and developer's fee are also within a reasonable range, taking into account project size, characteristics, locations and risk factors.

2. Equity Capital and Syndication Proceeds—In General

If the project involves the use of LITHCs, the subsidy layering review must also include an analysis of the equity that is made available to the project through the syndication or sale of LIHTCs. The amount of equity capital contributed by investors to a project partnership shall not be less than the amount generally contributed by investors in current market conditions, as determined by the HCA. The HCA must act during the development process to ensure that syndication proceeds going into the project are kept within an acceptable range.

3. Safe Harbor Percentage Allowances

HCAs will use the following safe harbor standards which HUD has established for subsidy layering analysis purposes for project-based voucher HAP contracts: The percentage allowances may be negotiated between the safe harbor and maximum allowable amounts with the project sponsor and the individual HCAs to reflect their assessment of the market and to respect their qualified allocation plan. Any approved fees that exceed safe harbor amounts must be justified by special circumstances.

a. Standard (1)

General Condition safe harbor—six percent (6%) of construction contract amount.

b. Standard (2)

Over-head safe harbor—two percent (2%) of construction contract amount.

c. Standard (3)

Builder's Profit: Safe harbor—six percent (6%) of construction contract amount.

The total allowed or allowable Safe Harbor percentages for General Conditions, Overhead and Builder's Profit are based on hard construction costs and the maximum combined costs shall not be more than 14% of the hard construction cost.

d. Standard (4)

Developer's fee: Safe harbor—twelve percent (12%) of the total development cost (profit and overhead);

The maximum allowable developer's fee is 15% of the project costs (profit and overhead).

4. Net Syndication Proceeds

LIHTCs safe harbor shall be determined by the HCA conducting the review based on the equity market in its State. The HCA must carefully consider the equity market and establish and enforce reasonable equity pricing assumptions. If the amount of equity going into the project from the syndication of tax credits is below the current market price limit without satisfactory documentation of the reasons for the lower amounts, the PHA shall not enter into the AHAP with the owner.

5. When Development Costs Are Excessive

If the costs for builder's profit, or developer's fee, exceed the safe harbor values without satisfactory documentation for the need for higher costs, either the HCA or HUD will take the actions outlined below:

a. HCA Performing Review

In cases where a HCA is performing the review, the HCA must reduce the subsidy source within its control, *i.e.,* the total tax credit allocation amount, whenever necessary to balance the project's sources and uses.

b. HUD Performing Review

Where HUD is performing the review and it is determined that after evaluating allowable sources and uses that the combination of assistance will result in excessive subsidy, HUD will reduce the proposed amount of PBV assistance.

6. When Development Costs Are Within Safe Harbor

If all Safe Harbor standards are met, the HCA must examine the effect project-based voucher assistance will have on the operations pro forma before making its LIHTC allocation. If the Safe Harbor and operational standards (discussed in sub-section 8 directly below) are met, the HCA must submit its certification to HUD with a copy to the applicable PHA along with its sources and uses statement. If HUD is conducting the review, HUD will make the determination and notify the PHA that an AHAP may be signed.

7. Operations Standards

a. Debt Coverage Ratio

In addition to the analysis of the development budget as part of the subsidy layering review process, the HCA must also evaluate the project's 15-year operating pro forma and apply the standards discussed below and contained within the Operations section of Appendix E. Project-based voucher assistance and the amount of cash flow the project-based voucher rent amounts will generate for a given project must be carefully analyzed. The HCA must analyze the project's projected Debt Cover Ratio (DCR) over a 15-year period (the maximum initial term of the project-based voucher HAP contract). The DCR is determined to ensure that the net-income for the project is sufficient to cover all repayable debt (*i.e.,* non-forgivable loans) over the life of the debt. In order to determine realistic costs over a 15-year period, the HCA must use appropriate trending assumptions for their market area. Generally, operating expenses should be trended at 3% to 7% per year and rent increases should be trended at 2% to 5% per year for the first 5 years and 5% for each year thereafter.

The minimum DCR is 1.10 and the maximum DCR may be up to 1.45 provided cash flow for the project does not exceed the limit established in accordance with section VII.A.7.b. of this Notice.

If it is projected that the DCR will not fall below the minimum DCR, the project should have sufficient cash flow to pay all project operating expenses; pay all amortized debt on the project, and have an acceptable percentage of the required debt service available for other uses. In addition, the established DCRs should ultimately provide sufficient cash-flow to subsidize very low-income and extremely low-income families through the project-based voucher program that the LIHTC program is unable to reach.

If the DCR exceeds the maximum stated above, there may be government assistance in the project which is more than necessary to make the project feasible.

Since variances in such things as vacancy rate, operating cost increases, and rent increases all affect the net operating income of a project, the HCA must perform further trending analysis to determine whether the number of proposed project-based vouchers should be reduced or whether the proposed rent amounts should be reduced. For example, if over the 15-year period the DCR begins to decrease and at some point it falls below the minimum of 1.10, all trending assumptions and costs should be re-visited before recommending a reduction in the project-based voucher subsidy. After further analysis, if the DCR is still at a level above the maximum allowable level, the HCA may either reduce the LIHTC allocation amount (for category 1 projects) or recommend to HUD the appropriate PBV subsidy amount including supporting documentation. HUD will require that the PHA reduce the level of project-based voucher subsidy. When HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

b. Cash-Flow

In addition to determining an acceptable DCR, actual cash flow to the project must also be analyzed. Cash-flow is determined after ensuring all debt can be satisfied and is defined as total income to the project minus total expenses. If the cash flow (minus any acceptable reserve amounts) exceeds 10% of total expenses, the cash generated from the project-based voucher assistance may be greater than is necessary to provide affordable housing. If the cash-flow is greater than 10% of the total operating expenses, the HCA must require the owner to re-visit the operating pro-forma to bring cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, the HCA shall recommend to HUD a reduction in the project-based voucher rents or the number of project-based voucher units. Any recommendation shall include documentation to support the HCA's recommendation. When HUD performs the review, and cash flow is greater than 10% of the total operating expenses, HUD will notify the PHA of its determination and instruct the PHA to require the owner to re-visit the operating pro-forma to bring the cash flow to a level that does not exceed 10% of the total operating expenses. If the owner declines, HUD will notify the PHA of the maximum number of project-based voucher units that may be approved and the maximum project-based voucher rent amounts that may be approved.

B. Category 2 Subsidy Layering Reviews

Projects falling within Category 2 shall only be required to undergo a limited review. The limited review shall consist of a review of the 15-year Operations Pro Forma and a review to ensure there is no duplicative assistance (as stated above in section VI.B.). The Operating Standards outlined in section VII.A.7. above shall be used for Category 2 subsidy layering reviews. Where it is determined that the inclusion of project-based voucher assistance will result in governmental assistance that is more than necessary to provide affordable housing, the HCA will make a recommendation, including supporting documentation, to HUD as to the appropriate PBV subsidy amount. If HUD is performing the review, HUD will, if necessary, reduce the voucher units or monthly project-based voucher rents proposed by the PHA.

VIII. Monitoring

HUD may perform quality control reviews of subsidy layering reviews performed by participating HCAs. The quality control reviews will examine the following:

- Whether all required documents and materials were available to the reviewer.

• Whether the values were correctly determined to be inside or outside of the approvable range.

• If values were above the safe harbor standards, whether sufficient documentation was available to the reviewer to justify the higher costs.

• If necessary, whether subsidy was reduced correctly.

If it is determined that any required documentation was not provided, or that any portion of the review was performed incorrectly, HUD may require appropriate corrective action.

Dated: July 2, 2010.

Milan Ozdinec,

Deputy Assistant Secretary for Office of Public Housing and Voucher Programs.

Appendix A—HCA's Notice of Intent To Participate

[_____, 20__]

U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 4232, Washington, DC 20410, By: E-mail: *pih.financial.management.division@hud.gov.*

Re: HCA's Intent To Participate—Subsidy Layering Reviews for Proposed Project-Based Voucher Housing Assistance Payments Contracts

Ladies and Gentlemen:

The undersigned, a qualified Housing Credit Agency as defined under Section 42 of the Internal Revenue Code of 1986, hereby notifies the United States Department of Housing and Urban Development that it intends to conduct Subsidy Layering Reviews pursuant to *HUD's Administrative Guidelines for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts,* for the purpose of ensuring that the combination of assistance under the Section 8 Project-Based Voucher Program with other Federal, State, or Local assistance does not result in excessive compensation. By signifying our intent to participate, the _____(name of agency) hereby certifies that:

The required personnel have reviewed the above cited statutes, the **Federal Register** Notice—*Administrative Guidelines: Subsidy Layering Reviews for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, and 24 CFR Section 983.55.*

The agency understands its responsibilities under the above cited statutes and the Guidelines; the agency certifies it will perform subsidy layering reviews in accordance with all statutory, regulatory and Guideline Requirements, as well as any future HUD Notices, Directives, or other program information.

By executing this Intent To Participate, the undersigned acknowledges that its participation will continue unless and until, the Department of Housing and Urban Development revokes this intent or _____(name of agency) informs HUD, in writing, upon 30 days notice of its decision to withdraw its intent to participate.

This Notice of Intent to Participate is hereby executed and dated as of the date first listed above. By executing this Notice of Intent, the _____(name of agency) certifies that, upon HUD approval, the _____(name of agency) shall immediately assume the responsibility of performing subsidy layering reviews for proposed Section 8 Project-based Voucher Housing Assistance Payments Contracts.

The Undersigned requests that the Department of Housing and Urban Development please direct all inquiries and correspondence relating to this Notice to:

[UNDERSIGNED NAME AND TITLE]
[STREET ADDRESS]
[CITY], [STATE] [ZIP]
Attention of: [NAME], [TITLE]
By Phone—[XXX–XXX–XXXX]
By Fax—[XXX–XXX–XXXX]
By E-mail—[e-mail address]

[NAME OF AGENCY]

By: _____

Name:

Title:

The completed, signed, and dated Notice of Intent to Participate should be sent as a PDF attachment to an e-mail message addressed to Miguel Fontanez at *pih.financial.management.division@hud.gov.* The e-mail message subject line should read "Submission of Notice of Intent to Participate."

For questions concerning the submission and receipt of the e-mail please call (202) 708–2934.

Appendix B—HCA Certification

For purposes of the provision of Section 8 Project Based Voucher Assistance authorized pursuant to 42 U.S.C. 8(o)(13), pursuant to section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD's Administrative Guidelines, all of which address the prevention of excess governmental subsidy, I hereby certify that the Section 8 project-based voucher assistance provided by the United States Department of Housing and Urban Development to _____, located in _____, is not more than is necessary to provide affordable housing after taking into account other government assistance.

_____

Name of HCA

_____

Printed Name of Authorized HCA Certifying Official

_____

Signature of Authorized HCA Certifying Official

_____

Date

Appendix C—HUD Form 2880

BILLING CODE 4210–67–P

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 10/31/2012)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Appendix D—Documents To Be Submitted by the PHA to the Applicable HCA or HUD Headquarters for Subsidy Layering Reviews

1. Narrative description of the project. This should include the total number of units, including bedroom distribution. If only a portion of the units will receive project-based voucher assistance, this information is needed for both the project as a whole, and for the assisted portion.

2. Sources and Uses of Funds Statement

Sources: List each source separately, indicate whether loan, grant, syndication proceeds, contributed equity, *etc.* Sources should generally include only permanent financing. If interim financing or a construction loan will be utilized, details should be included in a narrative (item 3 below).

Uses: Should be detailed. Do not use broad categories such as "soft costs." Acquisition costs should distinguish the purchase price from related costs such as appraisal, survey, titled and recording, and related legal fees. Construction and rehabilitation should include builder's profit and overhead as separate items.

3. Narrative describing details of each funding source. For loans, details should include principle, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. If a lender, grantor, or syndicator is imposing reserve or escrow requirements, details should be included in the narrative. If a lender will receive a portion of the net cash flow, either as additional debt service or in addition to debt service, this should be disclosed in the narrative.

4. Commitment Letters from lenders or other funding sources evidencing their commitment to provide funding to the project and disclosing significant terms. Loan agreements and grant agreements are sufficient to meet this requirement.

5. Appraisal Report. The appraisal should establish the "as is" value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance.

An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an "as is" valuation.

6. Stabilized Operating Proforma. Should include projected rental, commercial, and miscellaneous income, vacancy loss, operating expenses, debt service, reserve contributions and cash flow.

The analysis must be projected over a 15 year period. Income and expenses must be trended at ____ percent.

7. Tax Credit Allocation Letter. Issued by the State tax credit allocation agency, this letter advises the developer of the amount of LIHTCs reserved for the project.

8. Historic Tax Credits. Some projects in designated historical districts may receive an additional one time historic tax credit. When applicable, the amount of the historic tax credit should be disclosed.

9. Equity Contribution Schedule. If equity contributed to the project will be paid in installments over time, a schedule should be provided showing the amount and timing of planned contributions.

10. Bridge Loans. If the financing plan includes a bridge loan so that proceeds can be paid up front when equity contributions are planned over an extended period, appropriate details should be provided.

11. Standard disclosure and perjury statement

12. Identity of Interest Statement

13. PHA commitment letter for project-based voucher assistance

14. Proposed project-based voucher gross rent amounts

Appendix E

Subsidy Layering Analysis Form

SUBSIDY LAYERING ANALYSIS SUMMARY				Appendix E
Project Name, Sponsor and Phase Information				
Number of units				
SUMMARY: Subsidy Layering Guideline Standards (Note A)	This Project	"Safe Harbor" Standard	"Ceiling" Standard	
1. Builder Profit/General Condition/Over-head		6%,2%,6%	14% Gen Cond + OH&P	
2. Developer Fee		12.0%	15.0%	
3. Net Equity Proceeds		$0.80	Market rate	
4. Debt Coverage Ratio		1.10	1.45	
Calculation of Net Equity Proceeds from Syndication (Guideline Standard 3)				
(a) Gross LIHTC Equity Syndication Proceeds from Investor				
(b) Equity Proceeds Not Available for Project Uses				
(i) Bridge Financing Costs (on loans to be repaid by equity) **(Note A)**				
(A) Bridge loan interest				
(B) Bridge loan costs other than interest (lender legal, bank fees, etc.)				
(ii) Other Syndication Fees and Expenses **(Note B)**				
(A) Ownership entity organizational and legal cost				
(B) Syndication fees paid from gross syndication proceeds				
(C) Tax credit fees (to LIHTC-awarding agency, etc.)				
(D) Other syndication fees and costs (accounting, cost certification, etc.)				
(E) Total deductions from equity syndication proceeds				-
(c) Amount of Equity Contribution Per Dollar of Tax Credit to the Project				
(i) Net Equity Proceeds as of the Placed-in-Service Date (a(i) minus b(ii)(E))				
(ii) Enter amount of annual tax credit allocation (from tax credit award letter):				
(iii) Multiply by 10 (LIHTC award amont is annual allocation per year for 10 years			X 10	
(iv) Equals total LIHTC allocation to project over 10 years:			$ -	
(v) Multiplied by investor's ownership percentage:			X	
(vi) Equals LIHTC allocation to the investor:				
(vii) Net proceeds (c(i)), divided by LIHTC allocation to investor (c(vi)), yields net equity per dollar of =				
Calculation of Debt Coverage Ratio (guideline standard 4)				
(a) Net Operating Income				
(i) Total Operating Income				
(ii) minus Total Operating Expenses				
(iii) Equals NOI				
(b) Debt Coverage Ratio				
(i) Debt Service				
(II) Net Operating Income (4.(a)(iii) above) divided by Debt Service equals DCR:				
(c) Cash Flow				
(i)Annual Reserve contributions				
(ii) Cash Flow (4.a.iii minus 4.b.i minus 4.c.i)				
(iii) Cash Flow as a percentage of Expenses (4.c.ii divided by 4.a.ii)				

Notes:

A. Analysis must confirm that only reasonable, market-rate bridge loan interest and costs are recognized (to avoid excess profits that may result when loans are not negotiated through arm's-length transactions).

B. Syndication expenses are total costs (other than bridge loan interest and costs) incurred by the owner in obtaining cash for the sale of tax credits to investors. Include only those expenses incurred because of the extraordinary legal, organizational and accounting services and activities associated with utilizing tax credits.

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Appendix F—Sources and Uses Statement (Sample Format)

SOURCES

Debt Sources

Mortgage—

Loans—

Other Loans (specify)—

Other (Specify)—

Equity Sources

Grants available for project uses—

Estimated Net Syndication Proceeds—

Additional Owner Equity Necessary [1]—

Other Equity Sources (specify)

Total Sources $_____

[1] This line may be used for the additional amount needed from the owner to balance sources against uses when no additional monies are available from other sources.

Project Uses

Mortgage Replacement Cost Uses—
Total Land Improvements—
Total Structures—
General Requirements—
Builder's General Overhead—
Builder's Profit [2]—
Architects' Fees—
Bond Premium—
Other Fees—
Construction interest—
Taxes—
Examination Fee—
Inspection Fee—
Financing Fee—
FNMA/GNMA Fee—
Title & Recording—
Legal—
Organization—
Cost Certification Fee—
Contingency Reserve (Sub Rehab)—
BSPRA/SPRA (if applicable)—
Acquisition Costs—

Subtotal Mortgageable Replacement Cost Uses $_____

Non-Mortgage Uses

(i.e. Uses Payable by Sources Other than the Mortgage) [3]
Working Capital Reserve or [4]—
Operating Deficit Reserve [5]—

Subtotal Non-Mortgageable Uses $_____

Total Project Uses $_____

Estimated Net Syndication Proceeds

The HCA may use this format before completing the Net Syndication Proceeds estimate line above on the Sources and Uses Statement, and must use this format to reflect final allocation determination assumptions.

Total Tax Credit Allocation-$_____
Estimated Gross Syndication Proceeds-$_____
Syndication Expenses:
Accountant's Fee-$_____
Syndicator's Fee-$_____
Attorney's Fee [6]-$_____
HCA Fee-$_____
Organizational Expense [7]-$_____
Other (Specify)-$_____
Subtotal Syndication Expenses-$_____ [8]
Bridge Loan Costs less Interest (if applicable)-$_____
Adjustment for Early and Late Installments (See Glossary, Net Syndication Proceeds Estimate for adjustment explanation)-$_____
Total Reductions from Gross-$_____
Estimated Net Syndication Proceeds-$_____

[FR Doc. 2010–16827 Filed 7–8–10; 8:45 am]

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[2] Builder's Profit for non-Identity-of-Interest cases (a SPRA allowance may also be added below). See also Standard #1 safe harbor and ceiling standard alternatives before completing. The Mortgage Use lines relating to Builder's Profit and Developer's Fee may be left blank if alternative funding standards are used, and the amounts are reflected below.

[3] Note that syndication expenses are included below in the estimation of *Net* tax credit proceeds for this Statement, and therefore, are not included within this Statement.

[4] Only Letter of Credit Costs may be included if the reserve is funded by a Letter of Credit.

[5] Indicate the full cash reserve amount if funded by LIHTC proceeds. Indicate only the costs of obtaining a Letter of Credit for the reserve if funded by a Letter of Credit at initial closing.

[6] Such fees may not duplicate legal nor title work charges already recognized. Therefore, only fees associated with the additional legal service associated with LIHTC projects should be recognized here by the HCA.

[7] Such expenses may not include Organizational expenses which are already included, and should not be duplicated. Therefore, only extraordinary organizational expenses incurred because of the additional LIHTC-associated application preparation activities should be included here.

[8] *See* Guideline Standard #3 for separate safe harbor and ceiling limitations for private and public offerings.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5378–N–03]

Notice of Proposed Information Collection; Comment Request (Economic Opportunities for Low- and Very Low-Income Persons): Withdrawal of Notice

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice, withdrawal.

SUMMARY: The Office of Fair Housing and Equal Opportunity, Economic Opportunity Division is announcing the withdrawal of the Economic Opportunity for Low- and Very Low-Income Persons (Section 3) proposed information collection published June 23, 2010. The proposed information collection materials are being withdrawn until final comments are received within HUD. Subsequent notice regarding these proposed information collection materials will be published at that time.

DATES: The withdrawal is effective July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3468, (this is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: This Notice is withdrawing the previous proposed information collection notice regarding Economic Opportunity for Low and Very Low-Income Persons (Section 3), published June 23, 2010. Recipient agencies should continue to use the current version of form HUD 60002 until further notice.

Title of Proposed Notice: Economic Opportunity for Low-and Very Low-Income Persons.

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0043.

Description of Information Collection: This is a withdrawal of a proposed information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 1, 2010.

Staci Gilliam Hampton,

Director, Economic Opportunity Division.

[FR Doc. 2010–16701 Filed 7–8–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2019–0004; OMB No. 1660–0011]

Agency Information Collection Activities: Proposed Collection; Comment Request; Submission for OMB Review; Comment Request; Debt Collection Financial Statement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a reinstatement, without change, of a previously approved information collection for which approval has expired. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments on the collection of information related to disaster program accounts and debts owed to FEMA by individuals.

DATES: Comments must be submitted on or before April 28, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–XXXX–XXXX. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Zita Zduoba, FEMA Finance Center, Office of the Chief Financial Officer, at (540) 504–1613.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act as amended (31 U.S.C. 3701, et seq.), the Federal Claims Collection Standards (31 CFR parts 900–904), and the Department of Homeland Security (DHS) regulations (6 CFR Part 11); the Administrator of the Federal Emergency Management Agency (FEMA) is: (1) Required to attempt collection of all debts owed to the United States arising out of activities of the FEMA; and (2) for debts not exceeding $100,000, authorized to compromise such debts or terminate collection action completely where it appears that no person is liable for such debt or has the present or prospective financial ability to pay a significant sum or that the cost of collecting such debt is likely to exceed the amount of the recovery (31 U.S.C. 3711(a)(2)).

This proposed information collection previously published in the **Federal Register** on July 19, 2019 at 84 FR 34918 with a 60-day public comment period. No comments were received. This information collection expired on June 30, 2019. FEMA is requesting a reinstatement, without change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Debt Collection Financial Statement.

Type of information collection: Reinstatement, without change, of a previously approved information collection for which approval has expired.

OMB Number: 1660–0011.

Form Titles and Numbers: Debt Collection Financial Statement, FEMA form 127–0–1.

Abstract: FEMA Form 127–0–1 is used to collect information provided voluntarily by the debtor to evaluate the debtor's financial abilities to determine if they qualify for a payment plan and set repayment terms or determine a compromise to write-off a debt in part or in full. Financial information obtained is essential to evaluate the debtor's ability for the payment of the debt in part or in full. Debt may be a recoupment of an ineligible disaster assistance payment or improper payment to an employee.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Respondent Cost: $8,206.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $41,661.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–04128 Filed 2–27–20; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6201–N–01]

Administrative Guidelines: Subsidy Layering Review for Project-Based Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides updated Administrative Guidelines (Guidelines) and requirements for Project-Based Voucher (PBV) Subsidy Layering Reviews (SLRs), to include new PBV Housing Assistance Payments (HAP) contract terms provisions, as amended by the Housing Opportunity Through Modernization Act of 2016 (HOTMA),

and SLR requirements for Mixed-Finance projects that may or may not include PBV assistance. This notice also provides transparency on HUD's expectations regarding cash flow, debt coverage ratios, net operating income, and operating expense trending requirements.

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202–402–4212 or Belinda Bly, Supervisor, Urban Revitalization Division, telephone number 202–402–4104 (neither are toll-free numbers). Addresses for both: c/o Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

In support of HUD's mission to create quality affordable housing, HUD provides funding assistance to incentivize affordable housing development. Subsidy layering reviews (SLRs) are undertaken to ensure the amount of assistance provided by HUD is not more than necessary to make the PBV project feasible in consideration of all other governmental assistance. SLRs prevent excessive public assistance that could result when a development proposes combining (layering) the HAP subsidy from the PBV program with other public assistance from Federal, State, or local agencies, including assistance through tax concessions or credits.

SLRs for PBV assistance are required pursuant to Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)); section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA); and section 102 of the Department of Housing and Urban Development Reform Act of 1989. SLRs are only for proposed PBV new construction and rehabilitation projects prior to the execution of an Agreement to Enter into Housing Assistance Payments Contract (AHAP).

SLR requirements are not applicable to existing housing.[1] Specifically, an SLR is not required for a project already subject to a PBV HAP contract, even if that project is recapitalized with outside sources of funding (*i.e.,* a PBV HAP-assisted project under contract for 10 years which then receives a tax credit award to address rehabilitation needs). PBV regulations define existing housing as units that already exist on the proposal selection date that substantially comply with Housing Quality Standards (HQS) on that date. (The units must fully comply with the HQS before execution of the HAP contract.) In addition, no SLR is required when PBV is the only governmental assistance provided to a project.

Pursuant to 24 CFR 983.55, public housing agencies (PHAs) must submit a request for an SLR for a proposed PBV project when the project includes other governmental assistance. HUD can perform the SLRs in all cases; however, HUD has also delegated authority to participating Housing Credit Agencies (HCAs) as defined herein when the other governmental assistance includes Low-Income Housing Tax Credits (LIHTC).[2]

II. Subsidy Layering Review

A. Definitions

Housing Credit Agency: For purposes of this notice, an HCA is a state housing finance agency or other state agency defined by section 42 of the Internal Revenue Code of 1986. HCAs are sometimes referred to by other names, such as State Housing Finance Agencies or State Housing Corporation. A participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92) may also serve as an HCA.

Mixed-finance development: Development or modernization of public housing pursuant to 24 CFR 905 Subpart F, where public housing units are owned by an entity other than a PHA.

Other government assistance: Any loan, grant, guarantee, insurance, payment, rebate, subsidy, tax credit, tax benefit, or any other form of direct or indirect assistance from the federal government, a state, or a unit of general local government, or any agency or instrumentality thereof.

B. Requesting a SLR for a PBV Award

When a PHA selects a project that is either new construction or rehabilitation, as defined in 24 CFR 983.3, for a PBV award, and the project will include forms of governmental assistance other than PBVs, the PHA must request an SLR. PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. A list of participating HCAs is posted and updated periodically on the Housing Voucher Financial Management Division (FMD) website, found at: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fmd.* The participating HCA may charge a fee to perform the SLR, which the PHA may pay using Administrative Fees or Administrative Fee reserves.

The PHA is responsible for collecting all required documentation for the SLR from the project owner. A list of all the required documentation is included in Appendix A. If after the initial submission new information becomes available, the PHA is responsible for submitting updated information to HUD or the HCA. The PHA maintains a project file with a complete set of the required documents. As part of the project selection process and application for PBVs, the project owner must disclose all HUD and/or other Federal, State, or local governmental assistance committed to the project, as well as other governmental assistance, using Form HUD 2880 (even if no other governmental assistance is received or is anticipated). If PBV is the only governmental assistance, an SLR is not required. Whether the PHA or HCA performs the SLR, the PHA must confirm that no form of disclosed assistance renders the project ineligible for PBV assistance and does not violate 24 CFR 983.54.

The PHA must inform the owner if any information changes during the application process, either by the addition or deletion of other governmental assistance, the project owner must provide revised information to correct the earlier submissions to reflect the new information. If at any time (either during the application process, after AHAP execution, or after HAP execution) the owner receives supplemental HUD or new governmental assistance for the project that results in an increase in project financing in an amount equal to or greater than 10 percent of the approved SLR development budget, the owner must submit such changes to the PHA and the PHA must notify HUD or the HCA.[3] The AHAP requires that the owner disclose to the PHA information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any

[1] Section 2835(a)(1)(F) of Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), enacted July 30, 2008, does not require subsidy layering review for existing housing.

[2] Pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a ''Subsidy Layering Review'' provision at 42 U.S.C. 3545.

[3] 24 CFR 4.11.

agency or instrumentality thereof, that is made available or expected to be made available with respect to the contract units.

Completion of an environmental review and environmental approval is required before an AHAP can be executed, pursuant to 24 CFR 983.153. At the time of initial submission of the SLR request, the PHA submits evidence that a request for a 24 CFR part 58 review is submitted to the responsible entity or a 24 CFR part 50 review is submitted to the Field Office.

C. Analysis and Safe Harbor Standards

When undertaking an SLR, HUD reviews both the development and operating costs of a project to determine whether costs are within a reasonable range, taking into consideration the project's size, characteristics, location, costs, financing and risk factors. Costs that fall within acceptable safe harbor standards, as identified below, may move forward without further justification. If costs exceed safe harbor standards, then additional justification and documentation are required to justify the costs based on risk factors, and HUD approval is required.

If the review is by an HCA, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan.

(A) *Development Standards:*

i. *General Contractor Fees:* The safe harbor standard is based on hard construction costs. The maximum allowable combined contractor fee is fourteen percent (14%) of the total for hard construction costs. For example, if construction costs are $100,000, the safe harbor amount is $14,000:

- *General Conditions:* 6% of construction contract amount
- *Overhead:* 2% of construction contract amount
- *Builder's Profit:* 6% of construction contract amount

ii. *Developer Fee:* The safe harbor standard is a maximum of 15%. For projects combining public housing units and PBV units in a Mixed-Finance project, safe harbors are 9%, requiring no justification, above 9% and up to 12%, may be approved with justification. Fees over 12% may be approved if the PHA receives the amount over 12% and it is restricted for project costs or future phases as described in the ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003 or any successor document. See Section 7 on Mixed Finance Projects below.

(B) *Operating Standards:*

The maximum initial term for a PBV HAP contract is 20 years pursuant to section 8(o)(13)(F) of the 1937 Housing Act as recently amended by HOTMA, although the initial terms for other funding sources may be less. SLR requests must include an operating pro forma that reflects each year of the HAP contract initial term. All assumptions for income, expenses and debt must be clearly identified. Both the Debt Coverage Ratio (DCR) and cash flow are analyzed on a year-by-year basis. If a project has no debt, the SLR review is processed based only on cash-flow requirements, as described below in 6(C)(ii).

i. *Debt Coverage Ratio:* HUD and HCAs analyze the PBV development's projected DCR both on a yearly basis and trended over the term of the proposed subsidy period as an indicator of overall project health. As a HUD metric for PBV purposes, the minimum DCR is 1.10 and the maximum is 1.45. The DCR for each year is determined by dividing the net operating income for that year by the amount of the debt service for that year. Factors such as operating cost increases, rent increases, project size, unit and income mix, and vacancy rates affect net operating income. Therefore, a trending analysis is also used to evaluate the DCR over time and to determine whether the amount of assistance is excessive. HUD recognizes that some projects may have higher upfront DCRs since owners may frontload debt service to free up cash flow later in the project period for higher anticipated operating expenses, or that some projects may have higher DCRs in later years due to planned changes in financing costs, interest rates, or partnership transfers. If a project has an overall trending DCR outside the 1.10 to 1.45 range, the project may have too much governmental assistance. If a project DCR trends outside the range for an individual year, but has an overall trending DCR within the range, HUD will require justifications from the Owner or PHA to understand the project assumptions and yearly deviations.

- Net operating income is defined as total operating income minus total operating expenses. The net operating income for a project must cover all repayable debt over the life of the HAP contract.
- Operating expenses should be trended at a consistent fixed rate between 1% and 3% per year for the first 5 years and 3% thereafter. Justification for increases above 3% must be provided.
- Rent increases should be trended yearly at a consistent fixed rate between 2% and 3% per year. Justification is required for increases outside this range.
- Vacancy rates must not exceed 7%.
- Debt service is defined as the funds required to make payments on all non-forgivable loans, including any existing debt on the property. Debt service does not include forgivable/soft loans, non-repayable grants, non-repayable federal, state or local assistance, deferred developer fees, financing fees, partnership fees, management fees, capital contributions, tax concessions, or tax credits.

If the projected DCR remains between 1.10 and 1.45 during the initial term of the HAP contract, then it is assumed the project has enough cash-flow to pay operating expenses and amortized debt, and that the amount of government assistance is not excessive. HUD will require adjustments if the projected DCR in any one year falls below 1.10 and it continues to remain below 1.10 for a series of subsequent years as cash flow would not be enough to ensure stable operations. Likewise, HUD will require adjustments to PBV assistance, if the projected DCR exceeds the maximum of 1.45 in any one year and continues to remain above 1.45 for a series of subsequent years.

ii. *Cash-Flow:* For any given year of the project's operating pro forma, cash flow may not exceed 10% of total operating expenses. Cash-flow is defined as net operating income minus all required debt service.

- If all or a portion of the developer fee has been deferred and is owed, the face value amount of the deferred developer fee (*i.e.,* no interest earned) may be deducted from cash flow.
- Operational and replacement reserves may be deducted from cash flow when reserves are adjusted by a consistent amount each year.
- No further adjustments to cash-flow are permitted beyond deferred developer fees, operational reserve contributions and replacement reserve contributions.

If in any given year the annual cash-flow is greater than 10% of total operating expenses and it remains above 10%, it is assumed the cash generated from the government assistance is greater than is necessary to make the project feasible. Therefore, adjustments must be made by the project owner to reduce cash flow to 10% or less of operating expenses. If the owner declines, HUD will reduce PBV rents or the number of PBVs, so the project complies with the 10% requirement.

D. Requesting a SLR for a Mixed-Finance Project

For Mixed-Finance projects that also include PBVs, the SLR is handled as part of the Mixed-Finance project review process without a separate PBV SLR review. SLRs for Mixed-Finance projects are only done by HUD and may not be done by an HCA. Mixed-Finance reviews are done by HUD's Office of Public Housing Investments (OPHI) at HUD Headquarters. This provision also applies to Mixed-Finance projects with PBVs that are undertaken as part of the Choice Neighborhoods Grant Program, as well as Choice Neighborhoods projects that have PBVs, but no public housing. This includes MTW local nontraditional development (LNTD) proposals. OPHI prepares the SLR as part of the project review process without a separate PBV SLR review.

As it relates to the PBVs, Mixed-Finance projects must comply with the SLR standards identified above in the Notice. In addition to this review, the project will also be reviewed to assure compliance with the provisions of 24 CFR 905 Subpart F, and other applicable guidance, including the following:

- The ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003 or any successor document.
- Total Development Cost (TDC) and Housing Construction Cost (HCC) limits imposed on the project, pursuant to HUD Notice PIH–2011–38 or successor notice.
- The HUD Pro Rata Test, which assures that the proportion of HUD public housing funds committed to development of the project does not exceed the proportion of public housing units in the project. For example, if there are 120 units in the project and 50 are public housing, 42% of the units are public housing. Therefore, the amount of public housing funds contributed to the development of the project may not exceed 42% of the development budget, including hard and soft costs.
- HUD will review the amount of LIHTC equity to be invested in the project to ensure that the sale of LIHTCs results in an amount of net tax credit equity that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that the amount is not less than 51 cents for each dollar of tax credit allocation awarded to a project. If the project receives 51 cents or less of LIHTC equity or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

E. Outcome

(A) *HUD:*

If HUD completes the SLR and determines the PBV assistance complies with the standards set in this Notice, where the PBV assistance will not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and the local HUD Field Office will notify the PHA in writing.

If HUD completes the SLR and determines that the amount of government subsidy, including the PBV assistance, is excessive, HUD notifies the PHA. The notification includes a recommendation to reduce the amount of PBV assistance or a determination that PBV assistance cannot be provided. Once the PHA receives HUD's decision, the PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HUD Field Office for review.

(B) *HCA:*

If an HCA completes the SLR and determines that PBV assistance complies with the above standards of this notice and does not result in excessive government subsidy, the HCA must notify the PHA and submit a certification to HUD at *PIH.Financial.Management.Division@hud.gov* with a copy to the Director of the local HUD Office of Public Housing (*https://www.hud.gov/program_offices/public_indian_housing/about/field_office*) stating that the PBV assistance to be provided is in accordance with HUD SLR guidelines in this Notice and that a determination has been made that it does not result in excessive government subsidy. The AHAP/HAP contract may then be executed if the environmental approval is received. If the SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required. The HCA certification must include the documents outlined in Section 10. See Appendix C for a sample HCA certification letter and Appendix A for required information.

If the HCA SLR determines the public assistance amount is excessive, the HCA must notify HUD, in writing, with a copy to the PHA. The notification will include either a recommendation to reduce the amount of PBV assistance or the amount of LIHTC allocation or a determination that PBV assistance cannot be provided. HUD will consult with the HCA and the PHA prior to issuing a final determination to adopt the HCA's recommendation or to revise it. The PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HCA and the HUD Field Office for review.

When a proposal for PBV assistance is contemporaneous with the application for or award of LIHTCs, the required SLR may be fulfilled by the HCA in accordance with IRC section 42(m)(2) review if such review substantially complies with the HUD SLR requirements and guidelines.

(C) *Mixed-Finance Projects:* If HUD completes the SLR and determines the PBV assistance and other public housing assistance complies with the above standards of this Notice for Mixed-Finance projects and thus does not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and notify the PHA.

For projects that fail to comply, HUD will notify the PHA, which must (i) work with the owner to restructure the project so it complies with the above standards for Mixed-Finance projects and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the above standards.

F. Timing

In accordance with program regulations at 24 CFR 983.55, a PHA may not execute an AHAP contract until after the SLR is completed and approved by HUD or the HCA. The AHAP also may not be executed until there is a completed environmental review (ER) and written approval by the responsible entity or HUD, pursuant to 24 CFR part 50 or Part 58 and PIH Notice 2016–22. The local HUD Field Office must receive the completed SLR and either approve the Request for Release of Funds or complete a Part 50 environmental review prior to notifying the PHA that it may execute the AHAP. The PHA may request an SLR and environmental review simultaneously. The Field Office confirms to the FMD and/or the HCA that the ER process is complete.

If the owner reports to the PHA the addition of any governmental assistance before or during the AHAP contract when no SLR was initially required because the project had not received and did not anticipate receiving governmental assistance, then an SLR is required to be requested by the PHA at the time of the owner's report.

III. Housing Credit Agency Participation and Certification

An HCA is ordinarily established for the purpose of allocating and administering the LIHTC program under

section 42 of the Internal Revenue Code (IRC). With HUD approval, HCAs may perform SLRs for proposed PBV projects that include LIHTCs as part of the proposed financial assistance. If there are no LIHTCs, HCAs cannot conduct the SLR. SLRs without LIHTCs will only be conducted by HUD. Currently 29 states have a HUD-approved HCA; the remaining 21 states may seek HUD approval to conduct SLRs for PBV projects, by submitting a letter to HUD notifying HUD of their intent to participate. Appendix B is sample letter.

Pursuant to the requirements outlined herein, as well as the Memorandum Of Understanding (MOU) between participating HCAs and HUD, HCAs are required to provide notification to the FMD through the FMD mailbox of any SLRs approved on HUD's behalf by no later than 30 days from the date of authorization. Notifications of approval must contain the following documentation:

- Copy of the Signed HCA Certification as shown in Appendix C
- The HCA's Internal Recommendation and Sign-off
- The Developer's Disclosure of Sources and Uses of Funds
- The Developer's Operating Pro Forma Considered
- Copy of the PBV Commitment/Award Letter
- HUD Form 2880, and
- Rent Information and Project Summary
  a. Project Name and Address
  b. PHA name and code
  c. Field Office name and code
  d. HCA Name
  e. PBV Type: Rental Assistance Demonstration (RAD), Veterans Assistance and Supportive Housing (VASH), and/or Regular
  f. Elderly, Disabled, Homeless, Non-Elderly Disabled, Low-Income, and/or Veteran.
  g. Is the Project New Construction or Rehabilitation?
  h. Amount Per Dollar of Syndication Proceed
  i. Number of PBV Units Approved by Bedroom Size
  j. Debt Coverage Ratio: _____
  k. Project meets Cash Flow Criteria (Y/N)

IV. Overview Chart

The following chart summarizes the types of projects that require an SLR, the entity authorized to perform the SLR and the required certification. 102 (d) Certification is the owner's certification of no additional government funding using form HUD 2880.

Type of project and scenarios	SLR reviewer	102 (d) certification required?
PBV subsidy without LIHTC. However, project is new construction or rehabilitation, as defined in 24 CFR § 983.3, with 2 or more forms of government assistance.	HUD	Yes.
PBV existing housing, as defined in 24 CFR 983.3	No SLR required	No.
PBV new construction or rehabilitated housing, but PBV is the only form of government assistance.	No SLR required	No.
PBV subsidy with LIHTC, new construction or rehabilitated project	HCA or HUD	If by HCA, certification not required. Otherwise, HUD certifies.
Mixed-finance projects, with or without LIHTC, with or without PBV, with or with other forms of government assistance.	HUD	Yes.

V. Monitoring

HUD performs quality control reviews of SLRs performed by participating HCAs by examining the following:

- If all required document and materials are available to the reviewer
- If values are correctly determined within the approvable range
- If values are above safe harbor standards
- If documentation was provided to justify higher costs
- If the subsidy was reduced correctly (if applicable)

If any required documentation is not provided, or any portion of the review is performed incorrectly, HUD requires appropriate corrective action. When an SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required.

VI. Paperwork Reduction Act

The information collection requirements contained in this notice are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid control number.

Dated: February 21, 2020.

R. Hunter Kurtz,

Assistant Secretary for Public and Indian Housing.

Appendix A: PHA Submissions

PHAs are responsible for collecting information from project owners and assembling it in an SLR request submitted to the local HUD Public Housing Field Office or HCA. SLR requests must contain the following information. Assembly using a binder is recommended. Incomplete submissions will be returned.

Required elements of an SLR application & checklist	Check
1. *Subsidy Layering Review request memorandum:* Clearly identify the PHA, the PHA number, the Field Office number, the project's name, the project's total number of units, and the number of PBV units requested. For a sample memorandum see Attachment 1 of PIH Notice 2013–11 or newer version superseding it.	
2. *Project Description:* Short narrative identifying ownership, type of activity (rehabilitation or new construction), location (including county), total units, requested PBV units, PBV type (RAD, VASH, regular), utility allowances, bedroom distributions, supportive services (if applicable) and residential population (homeless, veteran, elderly, low-income families) The narrative should also identify any exceptions applicable to the project (*e.g.,* number of PBV exceeding the Project Cap).	

Required elements of an SLR application & checklist	Check
3. *Accounting Statement of Sources and Uses of Funds:* Identifying each source and indicate type (loan, grant, syndication proceeds, contributed equity). Sources generally include only permanent financing and grants. If interim financing or a construction loan is proposed, provide details in project description. Separately identify detailed uses, avoiding broad categories such as "soft costs." Under acquisition costs, identify purchase price separately from related costs such as appraisal, survey, title, recording and legal fees. Include separate line items representing construction contract amount, builder's profit, builder's overhead and total project costs. [Complete HUD Form 50156]	
4. *Description of funding sources:* Loans including principal, interest rate, amortization, term, and any accrual, deferral, balloon or forgiveness provisions. Describe any lender, grantor, or syndicator requirements for reserves or escrows requirements. Describe if a lender receives a portion of the net cash-flow, either as additional debt service or in addition to debt service. Identify the amount of LIHTC and include IRS form 8609.	
5. *Commitment Letters:* Lenders and other funding sources evidence their commitment to provide funding and disclose significant terms. Signed loan agreements and grant agreements meet this requirement. However, proposal letters and letters of intent do not meet this requirement.	
6. *Developer's Commitment Letter:* Delineating any arrangements, contributions, donations, significant terms or transfer of funds from the developer and/or participating partners such as deferred developer's fees, cash contributions, and equity investments.	
7. *HOME Commitment Letter:* (When applicable) Signed document clearly identifying requirements of the HOME designated units and intended rents.	
8. *Supportive Service Commitment:* (When applicable) A signed Memorandum of Understanding that describes the type of services to be provided, frequency, terms of service and resident eligibility.	
9. *Appraisal Report:* Based on the "as is" value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance. An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an "as is" valuation. The date of the appraisal to be within six months of date of submission.	
10. *Stabilized Operating Pro Forma:* Including projected rental, commercial, and miscellaneous gross income, vacancy loss, operating expenses, debt service, reserve contributions, with cash-flow projections, and debt service ratios; income and expenses trended at a consistent percent. [Complete HUD Form 50156]	
11. *Low-Income Housing Tax Credit Allocation Letter:* Issued by the authorized tax credit allocation agency, identifying the amount of LIHTCs reserved for the project.	
12. *Historic Tax Credit Letter:* Issued by an authorized historic credit agency, disclosing the estimated historic tax credit amount awarded to a project located in a designated historical area.	
13. *Equity Contribution Schedule:* If equity contributed to the project is paid in installments over time, provide a schedule showing the amount and timing of planned contributions.	
14. *Bridge Loans:* Providing details if the financing plan includes a bridge loan where equity contributions proceeds planned over an extended time can be paid upfront.	
15. Disclosure, perjury and identity of interest statement (Form HUD–2880) completed by the owner.	
16. *PBV award letter:* Identifying the housing authority's approval of project-based voucher assistance for the project by number of units and bedroom distribution.	
17. *PHA rent certification letter:* Documenting proposed contract rents, utility allowances, and gross rental amounts for assisted units. Include rent reasonableness documentation or comparability analysis as evidence of rent determination and certification.	
18. *Environmental Clearance:* Completion of the environmental review and environmental approval is required before AHAP approval can be granted. At the time of initial submission of the SLR request, submit evidence that a request for a part 58 review is submitted to the responsible entity or a part 50 review is submitted to the Field Office.	

Appendix B: HCA Notice of Intent To Participate

U.S. Department of Housing and Urban Development
PIH Financial Management Division, Room 4232
451 Seventh Street SW
Washington, DC 20410

By: Email:
pih.financial.management.division@hud.gov

Re: Intent to Participate on Subsidy Layering Reviews

To Whom It May Concern:

The undersigned is a qualified Housing Credit Agency (HCA) as defined under Section 42 of the Internal Revenue Code of 1986 and hereby notifies the United States Department of Housing and Urban Development (HUD) of our intention to conduct subsidy layering reviews (SLRs) pursuant to HUD's requirements for the purpose of ensuring the combination of assistance under the Section 8 Project-Based Voucher (PBV) Program with other federal, state, or local assistance does not result in excessive compensation. By signifying this notice, the undersigned hereby certifies that:

Required personnel reviewed the statutes identified in **Federal Register** Notice (Insert new reference) Contracts and Mixed-Finance Development, and 24 CFR 983.55.

The undersigned understands its HCA responsibilities and certifies it will perform SLRs in accordance with all present and future statutory, regulatory and HUD requirements. The undersign acknowledges participation continues unless and until HUD revokes this notice or the undersigned informs HUD, in writing with a 30-day-notice, of its decision to withdraw. Upon HUD approval, the undersigned shall immediately assume the responsibility of performing SLRs.

Name of agency and address:
Name, title and address if authorized official
Phone, FAX, and email:
Date of execution:

Transmit signed and dated notice of Intent to Participate as a PDF attachment to Miguel Fontanez at *pih.financial.management.division@hud.gov* with subject line identified "Submission of Notice of Intent to Participate." For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

Appendix C: HCA Certification

U.S. Department of Housing and Urban Development
PIH Financial Management Division, Room 4232
451 Seventh Street SW
Washington, DC 20410

By: Email:
pih.financial.management.division@hud.gov

Re: Certification of Subsidy Layering Review

To Whom It May Concern:

For purposes of providing of Section 8 Project-Based Voucher (PBV) Assistance authorized pursuant to 42 U.S.C. 8(o)(13), section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD requirements, all of which address the prevention of excess governmental subsidy, I hereby certify that

the PBV assistance is not more than is necessary to provide affordable housing after taking into account other government assistance for the following project:

Name, address of project:
Name, address of PHA:
Phone, FAX, and email:
Name, address of HCA:
Date of HUD's approval of HCA's intent to participate:
Name of Authorized HCA Certifying Official:
Signature of Authorized HCA Certifying Official:
Date:

Transmit signed and dated SLR certification as PDF attachments to Miguel A. Fontanez at *pih.financial.management.division@hud.gov,* with a copy to the Director of the local HUD Office of Public Housing: *https://www.hud.gov/program_offices/public_indian_housing/about/field_office,* with subject line identified ''SLR Certification—Project Name, City, State'' For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

[FR Doc. 2020–04147 Filed 2–27–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2020–0005; FXES11140300000–201–FF03E00000]

Draft Environmental Assessment and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Timber Road II, III, and IV Wind Farms, Paulding County, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Paulding Wind Farm II, LLC; Paulding Wind Farm III, LLC; and Paulding Wind Farm IV (collectively, the applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended, for the Timber Road II, III, and IV Wind Farms project. If approved, the ITP would authorize the incidental take of the Indiana bat and the northern long-eared bat for a 30-year term. The applicant has prepared a draft habitat conservation plan, which is available for public review. We also announce the availability of a draft environmental assessment, which has been prepared in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

DATES: We will accept comments received or postmarked on or before March 30, 2020.

ADDRESSES: *Obtaining documents:* Electronic copies of the documents this notice announces will be available online in Docket No. FWS–R3–ES–2020–0005 at *http://www.regulations.gov*. Public comments will also be available online at *http://www.regulations.gov*.

Paper copies of the documents this notice announces will be available at the following libraries: Brumback Library, 215 W Main St., Van Wert, OH 45891; and Paulding County Carnegie Library, 205 S Main St., Paulding, OH 45879.

Submitting comments: Please specify whether your comment addresses the draft habitat conservation plan, draft environmental assessment, any combination of the aforementioned documents, or other supporting documents. Please submit written comments by one of the following methods:

- *Online: http://www.regulations.gov*. Search for and submit comments on Docket No. FWS–R3–ES–2020–0005.
- *By hard copy:* Submit comments by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2020–0005; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/lN; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Keith Lott, Wildlife Biologist, or Patrice Ashfield, Project Leader, via phone at 614–416–8993, via the Federal Relay Service at 800–877–8339, or via U.S. mail at the U.S. Fish and Wildlife Service, Ohio Ecological Services Office, 4625 Morse Road, Suite 104, Columbus, OH 43230.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Paulding Wind Farm II, LLC; Paulding Wind Farm III, LLC; and Paulding Wind Farm IV (collectively, the applicant), for an incidental take permit (ITP) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). If approved, the ITP would be for a 30-year period and would authorize incidental take of the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

The applicant has prepared a draft habitat conservation plan (HCP), which covers the operation of the Timber Road II, III, and IV Wind Farms (project). The project consists of a wind-powered electric generation facility located in an approximately 65,017-acre area in Paulding County, Ohio. The draft HCP describes the following:

1. Permit duration;
2. Covered lands;
3. Covered species;
4. Project description and covered activities;
5. Environmental baseline and affected species;
6. Impact assessment and take authorization request for Indiana bats and northern long-eared bats;
7. Conservation plan, which includes the Biological Goals and Objectives, and measures to avoid, minimize, and mitigate the impact of the taking;
8. Monitoring and adaptive management;
9. Funding assurances;
10. Alternatives to the taking; and
11. Changed and unforeseen circumstances.

Under the National Environmental Policy Act (NEPA; 43 U.S.C. 4321 *et seq.*) and the ESA, the Service announces that we have gathered the information necessary to:

1. Determine the impacts and formulate alternatives for an EA related to:

a. Issuance of an ITP to the applicant for the take of the Indiana bat and the northern long-eared bat, and

b. Implementation of the associated HCP; and

2. Evaluate the application for ITP issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the Indiana bat and the northern long-eared bat.

Background

The project includes 134 wind turbines, with a total energy-generating capacity of 325.8 megawatts (MW). The project was constructed in several phases, during the period 2012–2020. Timber Road II is an operational facility and consists of 55 turbines with a generating capacity of 99 MW. Timber Road III is also an operational facility and consists of 48 turbines with a generating capacity of 100.8 MW. Timber Road IV is anticipated to be operational in 2020; consisting of 31 turbines, it has a generating capacity of 126 MW. The need for the proposed action (*i.e.,* issuance of an ITP) is based on the potential that operation of the project could result in take of Indiana bats and northern long-eared bats.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the operation of the project will not appreciably reduce the likelihood of the survival and recovery of the Indiana bat and northern long-eared bat, and includes

present, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Give the agency a copy of the relevant **Federal Register** notice showing the extension of TPS-related documentation in addition to your recent TPS-related document with your A-number, USCIS number or Form I–94 number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *https://www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2023–04735 Filed 3–7–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6359–N–01]

Administrative Guidelines: Subsidy Layering Review for Project-Based Vouchers

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides updated Administrative Guidelines (Guidelines) and requirements for Project-Based Voucher (PBV) Subsidy Layering Reviews (SLRs) and SLR requirements for Mixed-Finance projects that may or may not include PBV assistance. This updated notice provides transparency on HUD's expectations regarding cash flow, debt coverage ratios, net operating income, operating expense trending requirements, and expands guidance related to expense coverage ratios, when projects do not have hard debt. This notice also introduces a new mailbox (*PBVSLRs@hud.gov*) for SLRs requests to be performed by HUD HQ, and for SLR certifications and supporting documentation for SLRs the Housing Credit Agencies (HCAs) completed. Finally, the guidance expands the delegation of SLRs to HCAs to cases where PBV assistance is combined with other government assistance. Previously, the delegation only covered cases that included Low-Income Housing Tax Credits (LIHTCs). Otherwise SLR cases had to be completed by HUD (see overview chart in Section IV).

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontanez Sanchez, Director, Housing Voucher Financial Management Division, telephone number 202–402–4212 or Belinda Bly, Supervisor, Urban Revitalization Division, telephone number 202–402–4104 (neither are toll free numbers). Addresses for both: c/o Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

In support of HUD's mission to create quality affordable housing, HUD provides funding assistance to incentivize affordable housing development. Subsidy layering reviews (SLRs) are undertaken to ensure the amount of assistance provided by HUD is not more than necessary to make the PBV project feasible in consideration of all other government assistance. SLRs prevent excessive public assistance that could result when a development proposes combining (layering) the HAP subsidy from the PBV program with other public assistance from Federal, State, or local agencies, including assistance through tax concessions or credits.

SLRs for PBV assistance are required pursuant to Section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)); Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA); and Section 102 of the Department of Housing and Urban Development Reform Act of 1989. SLRs are only for proposed PBV new construction and rehabilitation projects as defined in 24 CFR 983.3. Under the current PBV regulations at 24 CFR 983.55(b), the SLR must be completed prior to execution of the Agreement to Enter Into a Housing Assistance Payments Contract (AHAP).

SLR requirements are not applicable to existing housing.[1] PBV regulations at 24 CFR 983.3 define existing housing as units that already exist on the proposal selection date that substantially comply with Housing Quality Standards (HQS) on that date. (The units must fully comply with the HQS before execution of the HAP contract.) In addition, no SLR is required when PBV is the only government assistance provided to a project.

Pursuant to 24 CFR 983.55, public housing agencies (PHAs) must submit a request for an SLR for a proposed PBV project when the project includes other government assistance. HUD can perform the SLRs in all cases, and prior to issuance of this notice, the Department had delegated SLR authority to participating Housing Credit Agencies (HCAs) only when assistance included LIHTCs. This Notice expands the option to delegate SLR authority to HCAs for proposed PBV projects when PBV assistance is combined with other governmental assistance even if no LIHTCs are included.[2]

In cases where PBV projects do not include LIHTCs, but there is a participating HCA in the project's jurisdiction, the HUD Field Office will ask the HCA whether they can perform the SLR. However, the PHAs may request that the HUD HQ perform the SLR. If PHAs do not request that HUD HQ perform the SLR, the HUD Field

[1] Section 2835(a)(1)(F) of Housing and Economic Recovery Act of 2008 (Pub. L. 110–289), enacted July 30, 2008, does not require subsidy layering review for existing housing.

[2] Pursuant to the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, approved April 4, 1994) added a ''Subsidy Layering Review'' provision at 42 U.S.C. 3545.

Office will ask the HCA first, but if the participating HCA is not available to perform the SLR, the HUD Field Office will refer the case to HUD HQ to perform the SLR. HUD recommends that PHAs communicate in advance with the participating HCAs (and/or HUD Field Offices) about the upcoming PBV projects that do not include LIHTCs so HCAs can confirm whether they can perform the SLRs.

II. Subsidy Layering Review

A. Definitions

Housing Credit Agency: For purposes of this notice, an HCA is a state housing finance agency or other state agency defined by Section 42 of the Internal Revenue Code of 1986. HCAs are sometimes referred to by other names, such as State Housing Finance Agencies or State Housing Corporation. A participating jurisdiction under HUD's HOME Investment Partnerships program (see 24 CFR part 92) may also serve as an HCA.

Mixed-finance development: Development or modernization of public housing pursuant to 24 CFR 905 Subpart F, where public housing units are owned by an entity other than a PHA.

Other government assistance: Any loan, grant, guarantee, insurance, payment, rebate, subsidy, tax credit, tax benefit, or any other form of direct or indirect assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof.

B. Requesting a SLR for a PBV Award

When a PHA selects a project that is either new construction or rehabilitation, as defined in 24 CFR 983.3, for a PBV award, and the project will include forms of government assistance other than PBVs, the PHA must request an SLR. PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. A list of participating HCAs is posted and updated periodically on the Housing Voucher Financial Management Division (FMD) website, found at: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/fmd.* The participating HCA may charge a fee to perform the SLR, which the PHA may pay using Administrative Fees or Administrative Fee reserves.

The PHA is responsible for collecting all required documentation for the SLR from the project owner. A list of required documentation is included in Appendix A. If after the initial submission new information becomes available, the PHA is responsible for submitting updated information to HUD or the HCA. The PHA maintains a project file with a complete set of the required documents. As part of the project selection process and application for PBVs, the project owner must disclose all HUD and/or other Federal, State, or local government assistance committed to the project, as well as other government assistance, using Form HUD 2880 (even if no other government assistance is received or is anticipated). If PBV is the only government assistance, an SLR is not required. Whether the PHA or HCA performs the SLR, the PHA must confirm that no form of disclosed assistance renders the project ineligible for PBV assistance and does not violate 24 CFR 983.54.

The owner must inform the PHA if any information changes during or after the application process, either by the addition or deletion of other government assistance. The project owner must provide revised information to correct the earlier submissions to reflect the new information. If at any time during or after the application process, the owner receives supplemental HUD or new government assistance for the project that results in changes in project financing, or changes in the number of PBV units, the owner must submit such changes to the PHA and the PHA must notify HUD or the HCA .[3] The SLR application should not be submitted to HUD until all financing of the project has firm commitments from all lenders. The AHAP requires that the owner disclose to the PHA information regarding any related assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or expected to be made available with respect to the contract units.

The PHA may not enter into the AHAP with the owner until the environmental review is completed and the PHA has received the environmental approval pursuant to 24 CFR 983.153(b). At the time of initial submission of the SLR request, the PHA submits evidence that a request for a 24 CFR part 58 review is submitted to the responsible entity, or a 24 CFR part 50 review is submitted to the Field Office.

C. SLR Analysis and Safe Harbor Standards

When undertaking an SLR, HUD reviews both the development and operating costs of a project to determine whether costs are within a reasonable range, taking into consideration the project's size, characteristics, location, costs, financing, and risk factors. Costs that fall within acceptable safe harbor standards, as identified below, may move forward without further justification. If costs exceed safe harbor standards, then additional justification and documentation are required to justify the costs based on risk factors, and HUD approval is required.

If the review is by an HCA, project costs exceeding the safe harbor standards must be consistent with the HCA's published qualified allocation plan.

(A) *Development Standards:*

i. *General Contractor Fees:* The safe harbor standard is based on hard construction costs. The maximum allowable combined contractor fee is fourteen percent (14%) of the total for hard construction costs. For example, if construction costs are $100,000, the safe harbor amount is $14,000:

- *Builder's General Requirements: 6% of construction contract amount*
- *Builder's Overhead: 2% of construction contract amount*
- *Builder's Profit: 6% of construction contract amount*

ii. *Developer Fee:* The safe harbor standard is a maximum of 15 percent. For projects combining public housing units and PBV units in a Mixed-Finance project, safe harbors are 9 percent, requiring no justification, above 9 percent and up to 12 percent, may be approved with justification. Fees over 12 percent may be approved if the PHA receives the amount over 12 percent and it is restricted for project costs or future phases as described in the ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003, or any successor document. See Section D on Mixed Finance Projects below.

(B) *Operating Standards:* The maximum initial term for a PBV HAP contract is 20 years pursuant to Section 8(o)(13)(F) of the 1937 Housing Act as amended by HOTMA, although the initial terms for other funding sources may be less. SLR requests must include an operating pro forma that reflects each year of the HAP contract initial term. All assumptions for income, expenses and debt must be clearly identified. Both the Debt Coverage Ratio (DCR) and cash flow are analyzed on a year-by-year basis. If a project has no permanent debt (*e.g.,* Grants), an Expense Coverage Ratio will be analyzed.

i. *Debt Coverage Ratio:* HUD and HCAs analyze the PBV development's

[3] 24 CFR 4.11.

projected DCR both on a yearly basis and trended over the term of the proposed subsidy period as an indicator of overall project health. As a HUD metric for PBV purposes, the minimum DCR is 1.10 and the maximum is 1.45. The DCR for each year is determined by dividing the net operating income for that year by the amount of the debt service for that year. Factors such as operating cost increases, rent increases, project size, unit and income mix, and vacancy rates affect net operating income. Therefore, a trending analysis is also used to evaluate the DCR over time and to determine whether the amount of assistance is excessive. HUD recognizes that some projects may have higher upfront DCRs since owners may frontload debt service to free up cash flow later in the project period for higher anticipated operating expenses, or that some projects may have higher DCRs in later years due to planned changes in financing costs, interest rates, or partnership transfers. If a project has an overall trending DCR outside the 1.10 to 1.45 range, the project may have too much government assistance. If a project DCR trends outside the range for an individual year, but has an overall trending DCR within the range, HUD will require justifications from the owner or PHA to understand the project's assumptions and yearly deviations. If a project has no hard debt, it must demonstrate an Expense Coverage Ratio (Gross Income divided by Total Operating Expenses) of no less than 1.10 and no higher than 1.45.

- Net operating income is defined as total operating income minus total operating expenses. The net operating income for a project must cover all repayable debt over the life of the HAP contract.
- Operating expenses should be trended at a consistent fixed rate between 1 percent and 3 percent per year for the first 5 years and 3 percent thereafter. Justification for increases above 3 percent must be provided.
- Rent increases should be trended yearly at a consistent fixed rate between 2 percent and 3 percent per year. Justification is required for increases outside this range.
- Vacancy rates must not exceed 7 percent.
- Debt service is defined as the funds required to make payments on all non-forgivable loans, including any existing debt on the property. Debt service does not include forgivable/soft loans, non-repayable grants, non-repayable Federal, State, or local assistance, deferred developer fees, financing fees, asset fees, partnership fees, investor fees, compliance fees, management fees, capital contributions, tax concessions, or tax credits.

If the projected DCR remains between 1.10 and 1.45 during the initial term of the HAP contract, then it is assumed the project has enough cash flow to pay operating expenses and amortized debt, and that the amount of government assistance is not excessive. HUD will require adjustments if the projected DCR or Expense Coverage Ratio in any one year falls below 1.10 and continues to remain below 1.10 for a series of subsequent years, as cash flow would not be enough to ensure stable operations. Likewise, HUD will require adjustments if the projected DCR exceeds the maximum of 1.45 in any one year and continues to remain above 1.45 for a series of subsequent years.

ii. *Cash Flow:* For any given year of the project's operating pro forma, cash flow may not exceed ten percent (10%) of total operating expenses. Cash flow is defined as net operating income minus all required debt service.

- If all or a portion of the developer fee has been deferred and is owed, the face value amount of the deferred developer fee may be deducted from cash flow. Accrued interest on the deferred fee may not be deducted.
- Operational and replacement reserves may be deducted from cash flow when reserves are adjusted by a consistent amount each year.
- No further adjustments to cash flow are permitted beyond deferred developer fees, operational reserve contributions and replacement reserve contributions.

If in any given year the annual cash flow is greater than ten percent of total operating expenses and it remains above 10 percent, it is assumed the cash generated from the government assistance is greater than is necessary to make the project feasible. Therefore, adjustments must be made by the project owner to reduce cash flow to 10 percent or less of operating expenses. If the owner declines, HUD will reduce PBV rents or the number of PBVs, so that the project complies with the 10 percent requirement.

D. Requesting a SLR for a Mixed-Finance Project

For Mixed-Finance projects that also include PBVs, the SLR is handled as part of the Mixed-Finance project review process without a separate PBV SLR review. SLRs for Mixed-Finance projects are only done by HUD and may not be done by an HCA. Mixed-Finance reviews are done by HUD's Office of Public Housing Investments (OPHI) at HUD Headquarters. This provision also applies to Mixed-Finance projects with PBVs that are undertaken as part of the Choice Neighborhoods Grant Program, as well as Choice Neighborhoods projects that have PBVs, but no public housing. This includes MTW local nontraditional development (LNTD) proposals. OPHI prepares the SLR as part of the project review process without a separate PBV SLR review.

As it relates to the PBVs, Mixed-Finance projects must comply with the SLR standards identified above in the Notice. In addition to this review, the project will also be reviewed to assure compliance with the provisions of 24 CFR 905 Subpart F, and other applicable guidance, including the following:

- The ''Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development,'' dated April 9, 2003, or any successor document.
- Total Development Cost (TDC) and Housing Construction Cost (HCC) limits imposed on the project, pursuant to HUD Notice PIH–2011–38 or successor notice.
- The HUD Pro Rata Test, which assures that the proportion of HUD public housing funds committed to development of the project does not exceed the proportion of public housing units in the project. For example, if there are 120 units in the project and 50 are public housing, 42 percent of the units are public housing. Therefore, the amount of public housing funds contributed to the development of the project may not exceed 42 percent of the development budget, including hard and soft costs.
- HUD will review the amount of LIHTC equity to be invested in the project to ensure that the sale of LIHTCs results in an amount of net tax credit equity that is consistent with amounts generally contributed by investors to similar projects under similar market conditions, and that the amount is not less than 51 cents for each dollar of tax credit allocation awarded to a project. If the project receives 51 cents or less of LIHTC equity or does not receive a market rate of equity, it is subject to additional review to reassess the project's fees and costs.

E. SLR Outcome

(A) *HUD:* If HUD completes the SLR and determines the PBV assistance complies with the standards set in this Notice, where the PBV assistance will not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and the local HUD Field Office will notify the PHA in writing.

If HUD completes the SLR and determines that the amount of

government subsidy, including the PBV assistance, is excessive, HUD notifies the PHA. The notification includes a recommendation to reduce the amount of PBV assistance or a determination that PBV assistance cannot be provided. Once the PHA receives HUD's decision, the PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HUD Field Office for review.

(B) *HCA:* If an HCA completes the SLR and determines that PBV assistance complies with the above standards of this notice and does not result in excessive government subsidy, the HCA must notify the PHA and submit a certification to HUD at *PBVSLRs@hud.gov* with a copy to the Director of the local HUD Office of Public Housing (*https://www.hud.gov/program_offices/public_indian_housing/about/field_office*) stating that the PBV assistance to be provided is in accordance with HUD SLR guidelines in this Notice and that a determination has been made that it does not result in excessive government subsidy. The AHAP/HAP contract may then be executed if the environmental approval is received. If the SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required. The HCA certification must include the documents outlined in Section III. See Appendix C for a sample HCA certification letter and Appendix A for required information.

If the HCA SLR determines the public assistance amount is excessive, the HCA must notify HUD, in writing, with a copy to the PHA. The notification will include either a recommendation to reduce the amount of PBV assistance or the amount of LIHTC allocation or a determination that PBV assistance cannot be provided. HUD will consult with the HCA and the PHA prior to issuing a final determination to adopt the HCA's recommendation or to revise it. The PHA must notify the owner in writing of the outcome and work with the owner to restructure, as needed. Revised materials must then be resubmitted to the HCA and the HUD Field Office for review.

When a proposal for PBV assistance is contemporaneous with the application for or award of LIHTCs or other government approved funds and state resources, the required SLR may be fulfilled by the HCA (in accordance with Section 42(m)(2) of the Internal Revenue Code (IRC)) if such review substantially complies with the HUD SLR requirements and guidelines.

(C) *Mixed-Finance Projects:* If HUD completes the SLR and determines the PBV assistance and other public housing assistance complies with the above standards of this Notice for Mixed-Finance projects and thus does not result in excessive government subsidy, HUD will certify compliance pursuant to 24 CFR 4.13 and notify the PHA.

For projects that fail to comply, HUD will notify the PHA, which must (i) work with the owner to restructure the project so it complies with the above standards for Mixed-Finance projects and resubmit the revised documentation to HUD for approval, or (ii) provide sufficient justification to HUD to allow HUD to approve a variation(s) from the above standards.

F. SLR Timing

In accordance with program regulations at 24 CFR 983.55, a PHA may not execute an AHAP contract until after the SLR is completed and approved by HUD or the HCA. The AHAP also may not be executed until there is a completed environmental review (ER) and written approval by the responsible entity or HUD, pursuant to 24 CFR part 50 or part 58 and PIH Notice 2016–22. The local HUD Field Office must receive the completed SLR and either approve the Request for Release of Funds or complete a part 50 environmental review prior to notifying the PHA that it may execute the AHAP. The PHA may request an SLR and environmental review simultaneously. The Field Office confirms to the FMD and/or the HCA that the ER process is complete.

If the owner reports to the PHA the addition of any other government assistance before or during the AHAP contract when no SLR was initially required because the project had not received and did not anticipate receiving other government assistance, then an SLR is required to be requested by the PHA at the time of the owner's report.

III. Housing Credit Agency Participation and Certification

State HCAs are state-chartered authorities established to assist and meet the affordable housing needs of their states' residents. Housing Credits (LIHTC, Historic Tax Credits, etc.), Housing Bonds, and HOME Investment Partnerships (HOME) are the federally authorized programs at the center of HCA activity within the states. Through these programs and other Federal and State resources, HCAs have initiated hundreds of housing programs, rental, special needs housing and even homeownership. Prior to issuance of this notice, HUD had delegated SLRs to authorized HCAs (that submitted an intent of participation to HUD for approval) for proposed PBV projects that include LIHTCs as part of the proposed financial assistance. (HCAs were ordinarily designated for the purpose of allocating and administering the LIHTC program under IRC Section 42). HUD is herewith expanding the authority to participating HCAs to conduct SLRs in cases where LIHTCs are not included, but other government assistance is included. Currently 31 states have a HUD-approved HCA; the remaining states may seek HUD approval to conduct SLRs for PBV projects by submitting a letter to HUD notifying HUD of their intent to participate. Appendix B contains a sample letter.

Pursuant to the requirements outlined herein, as well as the Memorandum Of Understanding (MOU) between participating HCAs and HUD, HCAs are required to provide notification to the FMD through the FMD mailbox of any SLRs approved on HUD's behalf by no later than 30 days from the date of authorization. Notifications of approval must contain the following documentation:

- Copy of the Signed HCA Certification as shown in Appendix C
- The HCA's Internal Recommendation and Sign-off
- The Developer's Disclosure of Sources and Uses of Funds
- The Developer's Operating Pro Forma Considered
- Copy of the PBV Commitment/Award Letter
- HUD Form 2880, and
- Rent Information and Project Summary. The information on these fields is collected for reporting purposes only.
  - a. Project Name and Address
  - b. PHA name and code
  - c. Field Office name and code
  - d. HCA Name
  - e. *PBV Type:* Rental Assistance Demonstration (RAD), Veterans Assistance and Supportive Housing (VASH), and/or Regular
  - f. *Tenant type:* Elderly, Disabled, Homeless, Low-Income Families, and/or Veteran.
  - g. Is the Project New Construction or Rehabilitation?
  - h. Amount Per Dollar of Syndication Proceed
  - i. Number of PBV Units Approved by Bedroom Size
  - j. Debt Coverage Ratio or Expense Coverage Ratio (if applicable):____
  - k. Project meets Cash Flow Criteria (Y/N)

IV. Overview Chart

The following chart summarizes the types of projects that require an SLR, the entity authorized to perform the SLR and the required certification. 102(d) Certification is the owner's certification of no additional government funding using form HUD 2880.

Type of project and scenarios	SLR reviewer	102(d) certification required?
PBV subsidy without LIHTC. However, project is new construction or rehabilitation, as defined in 24 CFR 983.3, with 2 or more forms of other government assistance.	HCA or HUD *	If by HCA, certification not required. Otherwise, HUD certifies.
PBV subsidy with LIHTC, new construction or rehabilitated project.	HCA or HUD	If by HCA, certification not required. Otherwise, HUD certifies.
PBV existing housing, as defined in 24 CFR 983.3	No SLR required	No.
PBV new construction or rehabilitated housing, but PBV is the only form of government assistance.	No SLR required	No.
Mixed-finance projects, with or without LIHTC, with or without PBV, with other forms of government assistance.	HUD	Yes.

* PHAs may request that HUD perform the SLR if the project does not include LIHTCs. If the PHA does not request that HUD perform the SLR, the Field Office will refer the SLR request to a participating HCA.

V. Monitoring

HUD performs quality control reviews of SLRs performed by participating HCAs by examining the following:

- If all required document and materials are available to the reviewer
- If values are correctly determined within the approvable range
- If values are above safe harbor standards
- If documentation was provided to justify higher costs
- If the subsidy was reduced correctly (if applicable)

If any required documentation is not provided, or any portion of the review is performed incorrectly, HUD requires appropriate corrective action. When an SLR is performed by an HCA, subsequent approval of the SLR by HUD is not required.

VI. Paperwork Reduction Act

The information collection requirements contained in this notice are currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) assigned OMB control numbers 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A: PHA Submissions

PHAs are responsible for collecting information from project owners and assembling it in an SLR request submitted to the local HUD Public Housing Field Office or HCA. SLR requests must contain the following information. Assembly using a binder is recommended. Incomplete submissions will be returned.

Required elements of an SLR application & checklist	Check
1. *Subsidy Layering Review request memorandum:* Clearly identify the PHA, the PHA number, the Field Office number, the project's name, the project's total number of units, and the number of PBV units requested. For a sample memorandum see Attachment 1 of PIH Notice 2013–11 or newer version superseding it.	
2. *Project Description:* Short narrative identifying ownership, type of activity (rehabilitation or new construction), location (including county), the project's total number of units, number of PBV units requested, PBV type (RAD, VASH, regular), utility allowances, bedroom distributions, supportive services (if applicable) and residential population (participants experiencing homelessness, veteran, elderly, low-income families). The narrative should also identify any exceptions applicable to the project (*e.g.*, number of PBV exceeding the Project Cap). The information on item 2 is collected for reporting purposes only.	
3. *Accounting Statement of Sources and Uses of Funds:* Identifying each source and indicate type (loan, grant, syndication proceeds, contributed equity). Sources generally include only permanent financing and grants. If interim financing or a construction loan is proposed, provide details in project description. Separately identify detailed uses, avoiding broad categories such as ''soft costs.'' Under acquisition costs, identify purchase price separately from related costs such as appraisal, survey, title, recording and legal fees. Include separate line items representing construction contract amount, builder's general requirements, builder's overhead, builder's profit, and total project costs. [Complete HUD Form 50156].	
4. *Description of funding sources:* Loans including principal, interest rate, amortization, term, and any accrual, deferral, balloon, or forgiveness provisions. Describe any lender, grantor, or syndicator requirements for reserves or escrows requirements. Describe if a lender receives a portion of the net cash flow, either as additional debt service or in addition to debt service. Identify the amount of LIHTC and include IRS form 8609.	
5. *Commitment Letters:* Lenders and other funding sources evidence their commitment to provide funding and disclose significant terms. Signed commitment letters, conditional commitment letters, loan agreements and grant agreements meet this requirement. However, proposal letters and letters of intent or interest do not meet this requirement.	
6. *Developer's Commitment Letter:* Delineating any arrangements, contributions, donations, significant terms, or transfer of funds from the developer and/or participating partners such as deferred developer's fees, cash contributions, land donations and equity investments.	
7. *HOME Commitment Letter:* (When applicable) Signed document clearly identifying requirements of the HOME designated units and intended rents.	
8. *Supportive Service Commitment:* (When applicable) A signed Memorandum of Understanding that describes the type of services to be provided, frequency, terms of service and resident eligibility.	
9. *Appraisal Report:* Based on the ''as is'' value of the property, before construction or rehabilitation, and without consideration of any financial implications of tax credits or project-based voucher assistance. An appraisal establishing value after the property is built or rehabilitated is not acceptable unless it also includes an ''as is'' valuation. The appraisal date must be within eighteen months of the SLR submission.	

Required elements of an SLR application & checklist	Check
10. *Completed HUD Form 50156:* The form must include the Operating Pro Forma, construction and permanent budget, projected rental, commercial, and miscellaneous gross income, vacancy loss, operating expenses, debt service, operational reserves contributions, replacement reserve contributions, cash flow projections, debt service ratios; as well as income and expenses trended at a consistent percentage.	
11. *Low-Income Housing Tax Credit Allocation Letter:* Issued by the authorized tax credit allocation agency, identifying the amount of LIHTCs reserved for the project.	
12. *Historic Tax Credit Letter:* Issued by an authorized historic credit agency, disclosing the estimated historic tax credit amount awarded to a project located in a designated historical area.	
13. *Equity Contribution Schedule:* If equity contributed to the project is paid in installments over time, provide a schedule showing the amount and timing of planned contributions.	
14. *Bridge Loans:* Providing details if the financing plan includes a bridge loan where equity contributions proceeds planned over an extended time can be paid upfront.	
15. Disclosure, perjury and identity of interest statement (Form HUD–2880) completed by the owner.	
16. *PBV award letter:* Identifying the housing authority's approval of project-based voucher assistance for the project by number of units and bedroom distribution.	
17. *PHA rent certification letter:* Documenting proposed contract rents, utility allowances, and gross rental amounts for assisted units. Include rent reasonableness documentation or comparability analysis as evidence of rent determination and certification.	

Appendix B: HCA Notice of Intent To Participate

U.S. Department of Housing and Urban Development, PIH Financial Management Division, Room 4232, 451 Seventh Street SW, Washington, DC 20410.

By: Email: *pih.financial.management.division@hud.gov.*

Re: Intent to Participate on Subsidy Layering Reviews

To Whom It May Concern:

The undersigned is a qualified Housing Credit Agency (HCA) as defined under Section 42 of the Internal Revenue Code of 1986 and hereby notifies the United States Department of Housing and Urban Development (HUD) of our intention to conduct subsidy layering reviews (SLRs) pursuant to HUD's requirements for the purpose of ensuring the combination of assistance under the Section 8 Project-Based Voucher (PBV) Program with other Federal, State, or local assistance does not result in excessive compensation. By signifying this notice, the undersigned hereby certifies that:

Required personnel reviewed the statutes identified in **Federal Register** Notice (Insert new reference) Contracts and Mixed-Finance Development, and 24 CFR 983.55.

The undersigned understands its HCA responsibilities and certifies it will perform SLRs in accordance with all present and future statutory, regulatory and HUD requirements. The undersign acknowledges participation continues unless and until HUD revokes this notice or the undersigned informs HUD, in writing with a 30-day-notice of its decision to withdraw. Upon HUD approval, the undersigned shall immediately assume the responsibility of performing SLRs.

Name of agency and address:

Name, title, and address if authorized official

Phone, FAX, and email:

Date of execution:

Transmit signed and dated notice of Intent to Participate as a PDF attachment to Miguel Fontanez at *pih.financial.management.division@hud.gov* with subject line identified ''Submission of Notice of Intent to Participate.'' For questions concerning the submission and receipt of the email, call the Financial Management Division at (202) 402–4212.

Appendix C: HCA Certification

U.S. Department of Housing and Urban Development, PIH Financial Management Division, Room 4232, 451 Seventh Street SW, Washington, DC 20410.

By: Email: *PBVSLRs@hud.gov.*

Re: Certification of Subsidy Layering Review

To Whom It May Concern:

For purposes of providing of Section 8 Project-Based Voucher (PBV) Assistance authorized pursuant to 42 U.S.C. 8(o)(13), Section 2835(a)(1)(M)(i) of the Housing and Economic Recovery Act of 2008 (HERA), Section 102 of the Department of Housing and Urban Development Reform Act of 1989, and in accordance with HUD requirements, all of which address the prevention of excess government subsidy, I hereby certify that the PBV assistance is not more than is necessary to provide affordable housing after taking into account other government assistance for the following project:

Name, address of project:

Name, address of PHA:

Phone, FAX, and email:

Name, address of HCA:

Date of HUD's approval of HCA's intent to participate:

Name of Authorized HCA Certifying Official:

Signature of Authorized HCA Certifying Official:

Date:

Transmit signed and dated SLR certification as PDF attachments to Miguel A. Fontanez at *PBVSLRs@hud.gov,* with a copy to the Director of the local HUD Office of Public Housing: *https://www.hud.gov/program_offices/public_indian_housing/about/field_office,* with subject line identified ''SLR Certification-Project Name, City, State''.

For questions concerning the submission and receipt of the email, contact the Financial Management Division at *PIH.Financial.Management.Division@hud.gov.*

[FR Doc. 2023–05045 Filed 3–10–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2022–N063 FXES11130600000–234–FF06E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 27 Listed Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 27 species under the Endangered Species Act of 1973, as amended. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 12, 2023. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: To request information, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section. For general information, contact Karen Newlon, Regional Recovery Project Manager, by phone at 406–430–9010 or by email at *karen_newlon@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access