

## § 982.643

pilot program. However, notwithstanding § 982.638(d), the PHA may, in its discretion, permit a family that has defaulted on its mortgage to move to a new unit with continued voucher homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency. The requirements of §§ 982.627(a)(5) and 982.627(e) do not apply to such a family.

[66 FR 33613, June 22, 2001]

### § 982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide a single downpayment assistance grant for a participant that has received tenant-based or project-based rental assistance in the Housing Choice Voucher Program.

(2) The downpayment assistance grant must be applied toward the downpayment required in connection with the purchase of the home and/or reasonable and customary closing costs in connection with the purchase of the home.

(3) If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of this part regarding the applicability of FHA requirements to voucher homeownership assistance and § 203.27 of this title regarding allowable fees, charges and discounts for FHA-insured mortgages).

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the difference between the payment standard and the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-time administrative fee in accordance with § 982.152(a)(1)(iii).

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(e) *Return to tenant-based assistance.* A family that has received a downpayment assistance grant may apply for and receive tenant-based rental assistance, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any member of the family owns any title or other interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

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

[67 FR 64494, Oct. 18, 2002]

## PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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.* The following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983:

(1) In subpart D of part 982: paragraph (e)(2) of 24 CFR 982.158;

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(2) In subpart E of part 982: paragraph (e) of 24 CFR 982.201, paragraph (b)(2) of 24 CFR 982.202, and paragraph (d) of 24 CFR 982.204;

(3) 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;

(4) Subpart H of part 982;

(5) In subpart I of part 982: 24 CFR 982.401; paragraphs (a)(3), (c), and (d) of 24 CFR 982.402; 24 CFR 982.403; 24 CFR 982.404; paragraphs (a), (b), (d), (i), and (j) of 24 CFR 982.405; paragraphs (a), (e), and (f) of 24 CFR 982.406; and 24 CFR 982.407;

(6) In subpart J of part 982: paragraphs (a), (b)(3), (b)(4), and (c) of § 982.451; and § 982.455;

(7) Subpart K of part 982: subpart K does not apply, except that the following provisions apply to the PBV Program:

(i) In 24 CFR 982.503, paragraphs (a)(1) and (d)(1)–(4) do apply;

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

(iii) Section 982.517 of this title (utility allowance schedule), except that 24 CFR 982.517(d) does not apply.

(8) 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; 88 FR 30504, May 11, 2023; 89 FR 38304, May 7, 2024]

### § 983.3 PBV definitions.

(a) *General.* This section defines PBV terms used in this part. For adminis-

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trative ease and convenience, those part 982 terms that are also used in this part are identified in this section. In limited cases, where there is a slight difference with the part 982 term, an annotation is made in this section.

(b) *Definitions.* The following definitions apply to this part:

*Abatement.* See 24 CFR 982.4.

*Administrative fee.* See 24 CFR 982.4.

*Administrative fee reserve.* See 24 CFR 982.4.

*Administrative Plan.* See 24 CFR 982.4.

*Admission.* The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program. If the family is not already a tenant-based voucher participant, the date of admission for the project-based voucher program is the first day of the initial lease term (the commencement of the assisted tenancy) in the PBV unit. 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).* A written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development activity undertaken for units 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.

*Applicant.* A family that has applied for admission to the PBV program but is not yet a program participant.

*Area where vouchers are difficult to use.* An area where a voucher is difficult to use is:

(i) A census tract with a poverty rate of 20 percent or less, as determined by HUD;

(ii) A ZIP code area where the rental vacancy rate is less than 4 percent, as determined by HUD; or

(iii) A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area or county FMR.

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

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

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

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

*Authorized voucher units.* See 24 CFR 982.4.

*Budget authority.* See 24 CFR 982.4.

*Building.* See 24 CFR 982.4.

*Comparable tenant-based rental assistance.* A tenant-based subsidy to enable a family to obtain decent, safe, and sanitary housing in the PHA jurisdiction, which meets the following minimum requirements:

(i) The family's monthly payment is not more than 40 percent of the family's adjusted monthly gross income;

(ii) The rental assistance contains no limitation as to the length of time the family may receive the assistance;

(iii) The family is not required to be employed, to seek employment, or to participate in supportive services in order to receive the rental assistance; and

(iv) The family is able to use the rental assistance in one or more other PHAs' jurisdictions.

*Congregate housing.* See 24 CFR 982.4.

*Continuously assisted.* See 24 CFR 982.4.

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

*Cooperative.* See 24 CFR 982.4.

*Cooperative member.* See 24 CFR 982.4.

*Covered housing provider.* For the 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 activity.* New construction or rehabilitation work done after the proposal or project selection date in order for a newly constructed or rehabilitated housing project to be covered by a PBV HAP contract, including work done pursuant to a rider to the HAP contract in accordance with § 983.157.

*Excepted units.* Units in a project not counted toward the project cap because they exclusively serve or are made available to certain families. See § 983.54(c)(2).

*Excluded units.* Units in a project not counted toward the program cap or project cap because they meet certain criteria. See § 983.59.

*Existing housing.* A project that meets the following criteria:

(i) All the proposed contract units in the project either fully comply or substantially comply with HQS on the proposal or project selection date, as determined per § 983.103(a). (The units must fully comply with HQS at the time required by § 983.103(c)). The units substantially comply with HQS if:

(A) The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and

(B) The PHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.

(ii) The PHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the project selection date (for

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projects excepted from competitive selection) through the first two years of the HAP contract.

*Family.* See 24 CFR 982.4.

*Family self-sufficiency program.* See 24 CFR 982.4.

*Gross rent.* See 24 CFR 982.4.

*Group home.* See 24 CFR 982.4.

*HAP contract.* See 24 CFR 982.4.

*Household.* See 24 CFR 5.100.

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

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

(ii) 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 minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the PBV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

*Independent entity.* See 24 CFR 982.4, except that the independent entity is subject to the requirements in § 983.57 (instead of 24 CFR 982.352(b) and 24 CFR 982.628(d)) for the PBV program.

*Initial rent to owner.* See 24 CFR 982.4.

*In-place family.* A family residing in a proposed contract unit on the proposal or project selection date.

*Jurisdiction.* See 24 CFR 982.4.

*Lease.* See 24 CFR 982.4.

*Manufactured home.* See 24 CFR 982.4.

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

*Newly constructed housing.* A project containing housing units that do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.

*Owner.* See 24 CFR 982.4.

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

*Participant.* A family that has been admitted and is currently assisted in the PBV (or HCV) program. If the family is not already a tenant-based voucher participant, the family becomes a participant on the effective date of the initial lease term (the commencement of the assisted tenancy) in the PBV unit.

*PHA Plan.* See 24 CFR 982.4.

*PHA-owned unit.* See 24 CFR 982.4.

*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.

*Program receipts.* See 24 CFR 982.4.

*Project.* A project can be 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. A PHA may, in its Administrative Plan, establish the circumstances under which it will define a project as only one of the following: a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

*Proposal or project selection date.* See § 983.51(g).

*Public housing agency (PHA).* See 24 CFR 982.4.

*Reasonable rent.* See 24 CFR 982.4.

*Rehabilitated housing.* A project which is developed for use under the PBV program, in which all proposed contract units exist on the proposal or project selection date, but which does not qualify as existing housing.

*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).

*Single room occupancy housing (SRO).* See 24 CFR 982.4.

*Site.* The grounds where the contract units are located or will be located after development.

*Small Area Fair Market Rents (SAFMRs).* See 24 CFR 982.4. (See also 24 CFR 888.113(c)(5).)

*Special housing type.* Subpart M of 24 CFR part 982 states the special regulatory requirements for different special housing types. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

*Subsidy standards.* See 24 CFR 982.4.

*Substantial improvement.* One of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract:

(i) Remodeling that alters the nature or type of housing units in a project;

(ii) Reconstruction; or

(iii) A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

*Tenant.* See 24 CFR 982.4.

*Tenant rent.* The amount payable monthly by the family as rent to the unit owner, as described in § 983.353(b). (See also 24 CFR 5.520(c)(1)).

*Tenant-paid utilities.* See 24 CFR 982.4.

*Total tenant payment.* See 24 CFR 5.628.

*Utility allowance.* See 24 CFR 5.603.

*Utility reimbursement.* See 24 CFR 5.603.

*Waiting list admission.* An admission from the PHA- or owner-maintained

PBV waiting list in accordance with § 983.251.

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

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 81 FR 80818, Nov. 16, 2016; 88 FR 30504, May 11, 2023; 89 FR 38305, May 7, 2024]

#### **§ 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.

*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.

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*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; 89 FR 38306, May 7, 2024]

## § 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 the consolidated annual contributions contract (ACC) in 24 CFR 982.151. In the PBV program, the assistance is “attached to the structure,” which may be a multi-family building or single-family building. (See description of the difference between “project-based” and “tenant-

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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 new construction or rehabilitation, the owner may develop the housing pursuant to an Agreement (§983.154) 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. Alternatively:

(i) The owner may develop the housing without an Agreement, before execution of a HAP contract, in accordance with §983.154(f); or

(ii) In the case of rehabilitation, the owner may develop the housing or complete development activity after execution of the HAP contract, in accordance with §983.157.

(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.* 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 funding is used to pay housing assistance for both tenant-based and project-based voucher units. Likewise, the administrative fee funding made available to a PHA is used for the administration of both tenant-based and project-based voucher assistance.

(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 and when the PHA executes, amends, or extends a HAP contract. The PHA must also state in its Administrative Plan that it will engage in project-basing and must amend its Administrative Plan to include all PBV-related matters over

which the PHA is exercising its policy-making discretion, including the subjects listed in § 983.10, as applicable.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 89 FR 38306, May 7, 2024]

**§ 983.6 Maximum number of PBV units (percentage limitation).**

(a) *In general.* Except as provided in paragraphs (d) and (e) of this section, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units, as adjusted as provided in paragraph (e) of this section, at the time of commitment. An analysis of impact must be conducted in accordance with § 983.58, if a PHA is project-basing 50 percent or more of the PHA's authorized voucher units.

(1) A PHA is not required to reduce the number of units to which it has committed PBV assistance under an Agreement or HAP contract if the number of authorized voucher units is subsequently reduced and the number of PBV units consequently exceeds the program limitation.

(2) A PHA that was within the program limit prior to April 18, 2017, and exceeded the program limit on that date due solely to the change in how the program cap is calculated is not required to reduce the number of PBV units under an Agreement or HAP contract.

(3) In the circumstances described in paragraphs (a)(1) and (2) of this section, the PHA may not add units to PBV HAP contracts, or enter into new Agreements or HAP contracts (except for HAP contracts resulting from Agreements entered into before the reduction of authorized units on April 18, 2017, as applicable), unless such units meet the conditions described in paragraph (d) or (e) of this section.

(b) *Units subject to percentage limitation.* All PBV units which the PHA has selected (from the time of the proposal or project selection date) or which are under an Agreement or HAP contract for PBV assistance count toward the 20 percent maximum or increased cap, as applicable, except as provided in paragraph (e).

(c) *PHA determination.* 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) *Increased cap.* A PHA may project-base an additional 10 percent of its authorized voucher units at the time of commitment, as adjusted as provided in paragraph (e) of this section, provided the additional units meet the conditions in paragraphs (d)(1) or (2) of this section:

(1) The units are part of a HAP contract executed on or after April 18, 2017, or are added on or after that date to any current HAP contract, including a contract entered into prior to April 18, 2017, and the units fall into at least one of the following categories:

(i) 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), included in 24 CFR 578.3.

(ii) The units are specifically made available to house families that are comprised of or include a veteran. For purposes of the increased cap, a veteran means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.

(iii) The units provide supportive housing to persons with disabilities or to elderly persons, as defined in 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 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. The PHA's Administrative Plan must describe the type and availability of supportive services the PHA will consider as qualifying for the 10 percent increased cap.

(iv) The units are located in an area where vouchers are difficult to use as defined in § 983.3.

(v) The units replace, on a different site, the units listed in § 983.59(b)(1) and (2) for which the PHA had authority under § 983.59 to commit PBV assistance on the original site without the

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units counting toward the program cap or project cap. The units are eligible under this category only if the PHA has not committed and will not commit PBV assistance to the original site pursuant to the normally applicable exclusions of those units under § 983.59. If the PHA subsequently plans to commit PBV assistance to units on the original site, those proposed units count toward and must comply with the 20 percent maximum or increased cap of this section, as applicable, and the project cap requirements of § 983.54.

(2) The units are part of a HAP contract executed on or after December 27, 2020, or are added on or after that date to any current HAP contract, including a contract entered into prior to December 27, 2020, and meet the following requirements:

(i) The units are exclusively made available to eligible youth as described in Section 8(x)(2)(B) of the U.S. Housing Act; and

(ii) If the units exclusively made available to eligible youth use Family Unification Program (FUP) assistance that is normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act, the PHA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth) and amends its Administrative Plan to specify that FUP PBV assistance is solely for eligible youth.

(3) The PBV HAP contract must specify, and the owner must set aside, the number of units meeting the conditions of paragraphs (d)(1)(i), (ii), (iii) and (d)(2) of this section. To qualify for the increased program cap for units meeting the conditions of paragraphs (d)(1)(i), (ii), (iii) and (d)(2) of this section, the unit must be occupied by the type of family specified in the applicable paragraph consistent with the requirements of § 983.262.

(e) *Units previously subject to federally required rent restrictions or that received long-term rental assistance from HUD.* Units that meet the requirements of § 983.59 do not count toward the program cap. Such units are removed from the number of authorized voucher units for purposes of calculating the percent-

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ages under paragraphs (a) and (d) of this section.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36165, June 25, 2014; 89 FR 38307, May 7, 2024]

### § 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 PBV provisions in the Administrative Plan.**

(a) *PHA policymaking discretion.* If a PHA exercises its discretion to operate a PBV program, the PHA's Administrative Plan as required by 24 CFR 982.54 of this title must include all the PHA's local policies on PBV-related matters over which the PHA is exercising its policymaking discretion.

(b) *PHA policies.* The PHA Administrative Plan must cover, at a minimum, the following PHA policies, as applicable:

(1) The definition of "project" as consistent with this part (§ 983.3(b));

(2) The program cap:

(i) A description of the types and availability of services that will qualify units under the supportive services authority under the program cap (§ 983.6(d)(1)(iii)); and

(ii) The PHA's policy limiting Family Unification Program assistance normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act to youth (§ 983.6(d)(2)(ii));

(3) A description of the circumstances under which the PHA will use the competitive and noncompetitive selection methods and the procedures for submission and selection of PBV proposals (§ 983.51(a));

(4) The project cap:

(i) The PHA's policy limiting Family Unification Program assistance normally available for eligible families and youth described in Section 8(x)(2) of the U.S. Housing Act to youth (§ 983.54(c)(2)(ii)); and

(ii) A description of the types and availability of services that will qualify units under the supportive services exception from the project cap (§ 983.54(c)(2)(iii));

(5) The site selection standards:

(i) The PHA's standard for deconcentrating poverty and expanding housing and economic opportunities (§ 983.55(b)(1)); and

(ii) The PHA's site selection policy (§ 983.55(c));

(6) PHA inspection policies:

(i) The timing of an initial inspection of existing housing (§ 983.103(c)(1));

(ii) Whether the PHA adopts for initial inspection of PBV existing housing the non-life-threatening deficiencies

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option, the alternative inspection option, or both, and whether the PHA adopts for periodic inspection of PBV housing the alternative inspection option. If so, state all policies as required by 24 CFR 982.54(d)(21)(ii) and (iii), as they relate to the PHA's PBV program (§ 983.103(c)(2) through (4) and (e)(3));

(iii) The frequency of periodic inspections (§ 983.103(e) and (i)); and

(iv) Any verification methods other than on-site inspection for different inspection types or for different HQS deficiencies (§ 983.103(h)).

(7) A description of the circumstances (if any) under which the PHA will establish additional requirements for quality, architecture, or design of PBV housing at the time of initial rehabilitation or new construction (§§ 983.154(e)(11), 983.157(e)(4));

(8) A description of the circumstances (if any) under which the PHA will enter a PBV HAP contract for newly constructed and rehabilitated housing without first entering into an Agreement or execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced (§ 983.154(f)(1));

(9) The PHA's policy on the form and manner in which the owner must submit evidence and certify that work has been completed (§ 983.155);

(10) Rehabilitated housing developed after HAP contract execution:

(i) A description of the circumstances (if any) under which the PHA will enter a PBV HAP contract for rehabilitated housing that allows for development activity to occur after HAP contract execution (§ 983.157(a)(2));

(ii) The timing of the initial inspection (§ 983.157(c)(4));

(iii) The form and manner of owner notifications of changes in the status of contract units (§ 983.157(e)(5)); and

(iv) The period for compliance (if any) for development activity that has not been completed by the deadline (§ 983.157(h)(1));

(11) The PHA's policy on amending PBV HAP contracts to substitute or add contract units (§ 983.207(f));

(12) PHA housing quality policies;

(i) A description of the circumstances (if any) under which the PHA will establish additional requirements for

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continued compliance with quality, architecture, or design of PBV housing during the term of the HAP contract (§ 983.208(a)(3));

(ii) The PHA's policy on the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the contract for units other than the unit with HQS deficiencies (§ 983.208(d)); and

(iii) The PHA's policy on assisting families with relocating and finding a new unit (§ 983.208(d)(6)(iii));

(13) A description of the PHA's waiting list policies for admission to PBV units, including any information on the owner waiting list policy (§ 983.251(c) and (e));

(14) A description of the PHA's policy on whether to conduct tenant screening and offer information to an owner (§ 983.255(a)(2) and (c)(4));

(15) The PHA's policy on continued housing assistance for a family that occupies a wrong-sized unit or a unit with accessibility features that the family does not require (§ 983.260(b));

(16) The PHA's policy on a family's right to move:

(i) The form of tenant-based rental assistance that the PHA will offer families (§ 983.261(b)); and

(ii) The procedures for tenants to request tenant-based rental assistance to move (§ 983.261(c));

(17) The PHA's policy regarding which options it will take if a unit is no longer qualified for excepted status or the increased program cap (§ 983.262(b)(4));

(18) The PHA's policy regarding continued occupancy of a unit under the increased program cap for supportive housing for persons with disabilities or elderly persons and units excepted based on elderly or disabled family status after a change in family composition removing the elderly family member or family member with a disability (§ 983.262(c)(3)(ii), (d)(1), and (d)(2));

(19) The PHA's policy regarding the PHA-determined amount it will use to calculate rent to owner (§ 983.301(b)(1) and (c)(2)(i));

(20) The PHA's policy on the required timing and form of owner requests for a rent increase (§ 983.302(a)(1));

(21) The PHA's policy on providing vacancy payments, including the required form and manner of requests for vacancy payments (§ 983.352(b)(1) and (4));

(22) The PHA's policy on utility reimbursements (§ 983.353(d)(2)); and

(23) The PHA's policy on applying SAFMRs to its PBV program per 24 CFR 888.113(h).

[89 FR 38308, May 7, 2024, as amended at 89 FR 46020, May 28, 2024]

#### § 983.11 Prohibition of excess public assistance.

(a) *PBV assistance for newly constructed and rehabilitated housing.* The PHA may provide PBV assistance for newly constructed and rehabilitated housing only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements.

(b) *PBV assistance for existing housing.* The subsidy layering requirements are not applicable to existing housing.

(c) *Development activity before HAP contract.* For the subsidy layering requirements related to development activity to place newly constructed or rehabilitated housing under a HAP contract, see § 983.153(b).

(d) *Additional assistance after HAP contract.* (1) For newly constructed or rehabilitated housing under a HAP contract, the owner must disclose to the PHA, in accordance with HUD requirements, information regarding any additional related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance includes but is not limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

(2) If the additional related assistance in paragraph (d)(1) of this section meets certain threshold and other requirements established by HUD through publication in the FEDERAL REGISTER, a subsidy layering review may be required to determine if it would result in excess public assistance to the project.

(3) Housing assistance payments must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable hous-

ing after taking account of such related assistance. The PHA must adjust, in accordance with HUD requirements, the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

[89 FR 38309, May 7, 2024]

#### § 983.12 Project record retention.

(a) *Records retained according to the contract term.* For each PBV project, the PHA must maintain the following records throughout the HAP contract term and for three years thereafter:

(1) Records to document the basis for PHA selection of the proposal, if selection is competitive, or project, if selection is noncompetitive, including records of the PHA's site selection determination (see § 983.55) and records to document the completion of the review of the selection process in the case of PHA-owned units and copies of the written notice of proposal selection and response of the appropriate party;

(2) The analysis of impact (see § 983.58(b)), if applicable;

(3) The subsidy layering determination, if applicable;

(4) The environmental review record, if applicable;

(5) The Agreement to enter into HAP contract, if applicable;

(6) Evidence of completion (see § 983.155), if applicable;

(7) The HAP contract and any rider and/or amendments, including amendments to extend the term of the contract;

(8) Records to document the basis for PHA determination and redetermination of rent to owner;

(9) Records to document HUD approval of the independent entity or entities, in the case of PHA-owned units;

(10) Records of the accessibility features of the project and each contract unit; and

(11) Other records as HUD may require.

(b) [Reserved]

[89 FR 38309, May 7, 2024]

#### Subpart B—Selection of PBV Proposals and Projects

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

## § 983.51

SOURCE: 89 FR 38309, May 7, 2024, unless otherwise noted.

### § 983.51 **Proposal and project selection procedures.**

(a) *General procedures for submission and selection.* The PHA Administrative Plan must describe the procedures for submission and selection of PBV proposals under the methods of competitive selection in paragraph (b) of this section and selection of projects under an exception to competitive selection under paragraph (c) of this section. The description must include under what circumstances the PHA will use the selection methods described in paragraphs (b) and (c) of this section. The PHA may allow for entities that have site control to submit proposals provided the entity will be the owner prior to entering into the Agreement or HAP contract. Before selecting a PBV proposal or project, the PHA must determine that the PBV proposal or project complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§ 983.52 and 983.53), complies with the cap on the number of PBV units per project (§ 983.54), and meets the site selection standards (§ 983.55). An owner may submit, and a PHA may select, a single proposal covering multiple projects where each project consists of a single-family building, provided all projects are the same housing type (existing, rehabilitated, or newly constructed).

(b) *Methods of competitive selection.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA Administrative Plan. (See paragraph (f) of this section for information about the selection of PHA-owned units.) The PHA must select PBV proposals by either of the following two methods:

(1) The PHA may issue a request for proposals (RFP), selecting a PBV proposal through a competition. The PHA's RFP 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. A PHA may establish selection procedures in the Administrative Plan that combine or are in conjunction with other Federal,

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State, or local government housing assistance, community development, or supportive services competitive selection processes. If the PHA selection process is combined and administered in conjunction with another RFP process, the PHA remains responsible for complying with § 983.51. See § 983.157(a)(2) for additional requirements for an RFP for rehabilitated housing.

(2) The PHA may select, without issuing an RFP, 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, where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date. The PHA may not select a housing assistance proposal using this method if the competition involved any consideration that the project would receive PBV assistance.

(c) *Exceptions to competitive selection.* Prior to selection under this paragraph (c), the PHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan.

(1) A PHA engaged in an initiative to improve, develop, or replace a public housing property or site may select for PBV assistance an existing, newly constructed, or rehabilitated project in which the PHA has an ownership interest or over which the PHA has control without following a competitive process.

(i) With respect to replacement housing, the PHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.

(ii) The public housing properties or sites may be in the public housing inventory at the time of project selection or they may have been removed from the public housing inventory through any available legal removal tool within five years of the project selection date.

(2) A PHA may select for future PBV assistance a project currently under the public housing program, or a project that is replacing the public housing project, in which a PHA has no ownership interest, or which a PHA has no control over, without following a competitive process, provided:

(i) The public housing project is either still in the public housing inventory or had been removed from the public housing inventory through any available legal removal tool within five years of the project selection date;

(ii) The PHA that owned or owns the public housing project does not administer the HCV program;

(iii) The project selected for PBV assistance was specifically identified as replacement housing for the impacted public housing residents as part of the public housing demolition/disposition application, voluntary conversion application, or any other application process submitted to and approved by HUD to remove the public housing project from the public housing inventory; and

(iv) With respect to replacement housing, the PHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.

(3) A PHA may select for PBV assistance a project consisting of PHA-owned units as defined at 24 CFR 982.4 without following a competitive process.

(i) The project units must continue to meet the definition of PHA-owned for the initial two years of the HAP contract unless there is a transfer of ownership approved by HUD.

(ii) The PHA must meet any conditions with respect to selection for PBV assistance of a project consisting of PHA-owned units without following a competitive process as may be established by HUD through publication in the FEDERAL REGISTER notice after providing opportunity for public comment.

(4) A PHA may select for PBV assistance a project that underwent an eligibility event within five years of the

project selection date, in which a family (or families) qualifies for enhanced voucher assistance under Section 8(t) of the Act and provides informed consent to relinquish its enhanced voucher for PBV assistance, without following a competitive process.

(d) *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.

(e) *Inspections required prior to proposal or project selection.* (1) The PHA must examine the proposed site before the proposal or project selection date to determine whether the site complies with the site selection standards in accordance with § 983.55.

(2) The PHA may execute a HAP contract for existing housing if:

(i) All proposed contract units in the project fully or substantially comply with the HQS on the proposal or project selection date, which the PHA must determine via inspection;

(ii) The project meets the environmental review requirements at § 983.56, if applicable;

(iii) The project meets the initial inspection requirements in accordance with § 983.103(c).

(f) *PHA written notice of proposal or project selection.* (1) For selection of proposals through competitive methods under paragraph (b) of this section, the PHA must give prompt written notice of proposal selection to the party that submitted a selected proposal and must also give prompt public notice of such selection. The PHA's requirement to provide public notice may be met via publication of the public notice in a local newspaper of general circulation

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or other means designed and actually operated to provide broad public notice. The written notice of proposal selection must require the owner or party that submitted the selected proposal to provide a written response to the PHA accepting the terms and requirements stated in the notice.

(2) For selection of projects through exceptions to competition under paragraph (c) of this section, the PHA must give prompt written notice of project selection to the owner following the PHA board's resolution approving the project-basing of assistance at the specific project. The written notice of project selection must require the owner of the project selected to provide a written response to the PHA accepting the terms and requirements stated in the notice.

(3) Regardless of the method of selection, if the project contains PHA-owned units that are not owned by a separate legal entity from the PHA, the PHA must provide the written notice of proposal or project selection to the responsible PHA official, and that official must certify in writing that the PHA accepts the terms and requirements stated in the notice.

(4) When an environmental review is required, if such a review has not been conducted prior to the project or proposal selection date, the PHA's written notice of project or proposal selection must state that the selection is subject to completion of a favorable environmental review and that the project or proposal may be rejected based on the results of the environmental review in accordance with 983.56(c).

(5) See § 983.153(c)(3) for additional notice requirements for newly constructed housing and rehabilitated housing.

(g) *Proposal or project selection date.* (1) The proposal selection date is the date on which the PHA provides written notice to the party that submitted the selected proposal under either paragraph (b)(1) or (2) of this section.

(2) For properties selected in accordance with § 983.51(c), the project selection date is the date of the PHA's board resolution approving the project-basing of assistance at the specific project.

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(h) *PHA-owned units.* A PHA-owned unit may be assisted under the PBV program only if the HUD field office or the independent entity reviews the project selection process the PHA undertook and determines that the project was appropriately selected based on the selection procedures specified in the PHA Administrative Plan. Under no circumstance may a HAP contract be effective for any of the subsidized housing types set forth in § 983.53(a). With the exception of projects selected in accordance with § 983.51(c), the PHA's selection procedures must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give preferential treatment (e.g., additional points) to PHA-owned units.

(i) *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.

(j) *Previous participation clearance.* HUD approval of specific projects or owners is not required. For example, owner proposal selection does not require submission of form HUD-2530 (Previous Participation Certification) or other HUD previous participation clearance.

(k) *Excluded from Federal procurement.* A PHA may not commit project-based assistance to a project if the owner or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424 or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or non-procurement programs.

[89 FR 38309, May 7, 2024, as amended at 89 FR 46020, May 28, 2024]

## § 983.52 Prohibition of assistance for ineligible units.

(a) *Ineligible unit.* A HAP contract must not be effective and no PBV assistance may be provided for any of the following:

- (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 execute a HAP contract and provide 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 are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located; and

(6) Transitional Housing.

(b) *Prohibition against assistance for owner-occupied unit.* A HAP contract must not be effective and no PBV assistance may be provided 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 places a specific unit under a HAP contract, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance in accordance with § 982.201 of this title. Additionally, for a family to be eligible for assistance in the specific unit, the unit must be appropriate for the size of the family under the PHA's subsidy standards and the total tenant payment for the family must be less than the gross rent for the unit, such that the unit will be eligible for a monthly HAP. The PHA must not enter into a 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 in violation of program requirements.* Unless a PHA has exercised the discretion at § 983.154(f), to undertake development activity without an Agreement or to

execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced, or at § 983.157, to undertake development activity after execution of the HAP contract, the PHA may not execute a HAP contract for units on which construction or rehabilitation commenced after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and prior to the effective date of an Agreement. At HUD's sole discretion, HUD may approve a PHA's request for an exception to this prohibition. In determining whether to approve the PHA request, HUD will consider appropriate factors, including the nature and extent of the construction or rehabilitation that has commenced.

(1) Units for which rehabilitation or new construction began after proposal submission or the date of board resolution but prior to the effective date of an Agreement (if applicable), as described in this paragraph (d), do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements do not qualify as existing housing.

**§ 983.53 Prohibition of assistance for units in subsidized housing.**

(a) *Types of subsidized housing prohibited from receiving PBV assistance.* A HAP contract must not be effective and no PBV assistance may be provided for any of the following:

- (1) A public housing dwelling unit;
- (2) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

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

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

(5) 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).

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However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(6) 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);

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

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

(9) 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.*); or

(10) 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).

(b) [Reserved]

### § 983.54 Cap on number of PBV units in each project (income-mixing requirement).

(a) *Project cap.* Except as provided in paragraph (b) or (c) of this section, a PHA may not select a proposal to provide PBV assistance or enter into an Agreement or HAP contract if the number of assisted units in a project is more than the greater of 25 percent of the number of dwelling units (assisted and unassisted, as adjusted as provided in paragraph (c)(3)) in the project or 25 units.

(b) *Higher project cap.* A PHA may provide PBV assistance to the greater of 25 units or 40 percent of the number of dwelling units (assisted and unassisted, as adjusted as provided in paragraph (c)(3) of this section) in the project if the project is located in an area where vouchers are difficult to use as defined in § 983.3.

(c) *Exceptions to the project cap.* (1) A project is not limited to a single exception category but may include excepted units from any of the exception cat-

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egories under paragraph (2) and excluded units under paragraph (3) below.

(2) PBV units are not counted toward the project cap in the following cases:

(i) Units exclusively serving elderly families, as defined in 24 CFR 5.403;

(ii) Units exclusively made available to eligible youth described in Section 8(x)(2)(B) of the U.S. Housing Act. If the units exclusively made available to eligible youth use Family Unification Program (FUP) assistance that is normally available for eligible families and youth, the PHA must determine that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations (families and youth), maintain documentation to support this determination, and amend its Administrative Plan to include the limitation of these FUP PBV units to eligible youth; or

(iii) Units exclusively made available to households eligible for supportive services available to the residents of the project assisted with PBV assistance. The project must make supportive services available to all PBV-assisted families in the project, but the family may not be required to participate in the services as a condition of living in the excepted unit. 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. The supportive services must be made available to the family within a reasonable time as defined by the PHA, but not to exceed 120 calendar days from the family's request. The PHA must include in its Administrative Plan the types of services offered to families that will enable 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), and the reasonable time by which such services must be made available to the family, not to exceed 120 calendar days. A PHA that manages an FSS program may offer FSS to meet the exception. The PHA may also make the supportive

services used in connection with the FSS program available to non-FSS PBV families at the project.

(3) Units that are excluded under § 983.59 do not count toward the project cap. Such units are removed from the number of dwelling units for purposes of calculating the percentages under paragraphs (a) and (b) of this section.

(4)(i) The PBV HAP contract must specify, and the owner must set aside, the number of excepted units made available for occupancy by families who qualify for the exception.

(ii) For a unit to be considered excepted it must be occupied by a family who qualifies for the exception.

(d) *HAP contracts already in effect.* (1) In general, HAP contracts in effect prior to April 18, 2017, when the exception at paragraph (c)(2)(iii) of this section came into effect and a prior exception for disabled families was removed, or prior to December 27, 2020, when the exception at paragraph (c)(2)(ii) of this section came into effect, are governed by those HAP contracts' terms concerning the number and type of excepted units in a project. 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 and any extension.

(2) The owner and the PHA may mutually agree to change the requirements for excepted units under the HAP contract to comply with the excepted unit requirements in subsection (c) of this section. However, any change to the HAP contract may only be made if the change does not jeopardize an assisted family's eligibility for continued assistance at the project.

(e) *PHA determination.* The PHA determines the number of units in the project for which the PHA will provide project-based assistance, including whether and how many units will be excepted, subject to the provisions of this section. See § 983.262 for occupancy requirements of excepted units.

(f) *HUD monitoring.* HUD may establish additional monitoring and oversight requirements for PBV projects in which more than 40 percent of the dwelling units are assisted under a PBV HAP contract through a FEDERAL

REGISTER Notice, subject to public comment.

#### § 983.55 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 site and neighborhood standards.* The PHA may not select a project or 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;

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(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 must 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 also be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations (28 CFR part 35), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, including meeting the Section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site and neighborhood is reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular

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traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(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 paragraphs (e)(3)(iii) through (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

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status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

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

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

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

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

### § 983.56 Environmental review.

(a) *HUD environmental regulations.* (1) HUD environmental regulations at 24 CFR parts 50 and 58 apply to activities under the PBV program, except as provided in paragraph (a)(2) of this section.

(2) For projects or proposals that were selected in accordance with the site selection standards at § 983.55 in effect on or after June 6, 2024, no environmental review is required to be undertaken before entering into a HAP contract for existing housing, except to the extent a Federal environmental review is required by law or regulation relating to funding other than PBV housing assistance payments.

(b) *Who performs the environmental review?* Under 24 CFR part 58, the unit of general local government within which the project is located that exercises land use responsibility, the county, or the 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. 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) *Notice of applicability.* When an environmental review is required, if such a review has not been conducted prior to the proposal or project selection date, then the PHA’s written notice of proposal or project selection must state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review.

(d) *Environmental review limitations.* When an environmental review is required, a PHA may not execute 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 these activities, until one of the following occurs:

(1) The responsible entity has determined that the activities to be undertaken are exempt under 24 CFR 58.34(a) or categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b);

(2) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the PHA’s Request for Release of Funds and Certification (form HUD-7015.15). HUD approves the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD-7015.16, thereby authorizing the PHA to execute an Agreement or HAP contract, as applicable; or

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

(e) *Environmental review restrictions.* HUD will not issue a Letter to Proceed

or form HUD-7015.16 to the PHA or provide environmental clearance if the PHA, the owner, or its contractors have undertaken any of the activities described in paragraph (d) of this section.

(f) *Mitigating measures.* The PHA must document any mitigating measures or other conditions as provided in 24 CFR part 50 or 58, as applicable, and must complete or require the owner to carry out such measures and conditions.

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

#### § 983.57 PHA-owned units.

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

(b) *Independent entity functions.* In connection with PHA-owned units:

(1) The independent entity must determine rent to owner, including rent reasonableness and calculating any rent adjustments by an OCAF (where applicable), in accordance with §§ 983.301 through 983.305.

(2) The independent entity must perform unit inspections in accordance with § 983.103(g).

(3) When the owner carries out development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212, the independent entity must review the evidence and work completion certification submitted by the owner in accordance with § 983.155(b) and determine if the units are complete in accordance with § 983.156.

(4) The independent entity must determine whether to approve substantial improvement to units under a HAP contract in accordance with § 983.212.

(c) *Payment to independent entity.* The PHA may compensate the independent entity from PHA administrative fees (including fees credited to the administrative fee reserve) for the services performed by the independent entity. The PHA may not use other program receipts to compensate the independent entity for such services. The PHA and the independent entity may not charge the family any fee or charge for the

services provided by the independent entity.

#### § 983.58 PHA determination prior to selection.

(a) *Analysis of units and budget.* A PHA must calculate the number of authorized voucher units that it is permitted to project-base in accordance with § 983.6 and determine the amount of budget authority that it has available for project-basing in accordance with § 983.5(b), before it issues a request for proposals in accordance with § 983.51(b)(1), makes a selection based on a previous competition in accordance with § 983.51(b)(2), amends an existing HAP contract to add units in accordance with § 983.207(b), or non-competitively selects a project in accordance with § 983.51(c).

(b) *Analysis of impact.* Prior to selecting a project for PBV assistance, a PHA must perform an analysis of the impact if project-basing 50 percent or more of the PHA's authorized voucher units. The analysis should consider the ability of the PHA to meet the needs of the community across its tenant-based and project-based voucher portfolio, including the impact on, among others: families on the waiting list and eligible PBV families that wish to move under § 983.261. The analysis performed by the PHA must be available as part of the public record.

#### § 983.59 Units excluded from program cap and project cap.

(a) *General.* For HAP contracts entered into on or after April 18, 2017, the PHA may commit project-based assistance to units that meet the requirements for exclusion in paragraph (b) of this section. Such units do not count toward the program cap or project cap described in §§ 983.6 and 983.54, respectively.

(b) *Requirements for exclusion of existing or rehabilitated units.* Excluded units must, in the five years prior to the request for proposals (RFP) or the proposal or project selection date in the case of selection without RFP, fall into one of the following categories provided that the units are removed from all categories prior to the effective date of the HAP contract:

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(1) The units have 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) Rental Assistance Program (RAP) (Section 236(f)(2) of the National Housing Act); or

(vi) Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978).

(2) The units have been subject to a federally required rent restriction under one of the following programs:

(i) The Low-Income Housing Tax Credit program (26 U.S.C. 42);

(ii) Section 515 Rural Rental Housing Loans (42 U.S.C. 1485); or

(iii) The following HUD programs:

(A) Section 236;

(B) Section 221(d)(3) Below Market Interest Rate;

(C) Housing For the Elderly (Section 202 of the Housing Act of 1959);

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

(E) Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978); or

(iv) Any other program identified by HUD through FEDERAL REGISTER notice subject to public comment.

(c) *Replacement units.* Newly constructed units developed under the PBV program may be excluded from the program cap and project cap provided the primary purpose of the newly constructed units is or was to replace units that meet the criteria of paragraph (b)(1) or (2) of this section. The newly constructed unit must be located on the same site as the unit it is replacing; however, an expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the

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replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. In addition, in order for the replacement units to be excluded from the program and project caps, one of the following must be true:

(1) Former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV newly constructed project when it is ready for occupancy.

(2) Prior to the demolition of the original project, the PBV newly constructed project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

(d) *Unit size configuration and number of units for newly constructed and rehabilitated projects.* The unit size configuration of the PBV newly constructed or rehabilitated 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, only the total number of units in the original project are excluded from the program cap and the project cap. Units that exceed the total number of covered units in the original project are subject to the program cap and the project cap.

(e) *Inapplicability of other program and project cap exceptions.* The 10 percent exception under § 983.6 and the project cap exception under § 983.54(c)(2) are inapplicable to excluded units under this section.

### Subpart C—Dwelling Units

#### § 983.101 Housing quality standards.

(a) *HQS applicability.* As defined in § 983.3, HQS refers to the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 of this title for housing assisted under the PBV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

(b) *Requirements for special housing types.* For special housing types assisted under the PBV program, HQS applies to the PBV program except as specified in 24 CFR part 982, subpart M. Provisions 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.* 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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014; 88 FR 30504, May 11, 2023; 89 FR 38315, May 7, 2024]

#### § 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.* If the units to be assisted already exist, the PHA must inspect all units before the proposal or project selection date and must determine if the project meets the definition of existing housing. If the project is existing housing, the PHA may not execute the HAP contract until all units meet the initial inspection requirements in accordance with paragraph (c) of this section.

(b) *Initial inspection of newly constructed and rehabilitated projects and units that underwent substantial improvement to be added to a HAP contract.* Following completion of work pursuant to § 983.155, the PHA must complete the following inspection(s), as applicable in accordance with § 983.156:

(1) For rehabilitated housing that is developed prior to the HAP contract term or newly constructed housing, the PHA must inspect each proposed newly constructed and rehabilitated PBV unit before execution of the HAP contract. Each proposed PBV unit must fully comply with HQS prior to HAP contract execution.

(2) For rehabilitated housing that will undergo development activity after HAP contract execution per § 983.157, the PHA must conduct unit inspections in accordance with the requirements of § 983.157.

(3) Inspect each unit that underwent substantial improvement pursuant to §§ 983.207(d) or 983.212. Each PBV unit that underwent substantial improvement must fully comply with HQS prior to the PHA adding the unit to the HAP contract, returning the unit temporarily removed to the HAP contract, allowing re-occupancy of the unit, and resuming housing assistance payments, as applicable.

(c) *Initial inspection requirements for existing housing—(1) In general.* In accordance with this paragraph, the PHA may adopt in its Administrative Plan the non-life-threatening deficiencies option or the alternative inspection option, or both, for initial inspections of existing housing. If the PHA has not adopted the initial inspection non-life-

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threatening deficiency option (NLT option) or the alternative inspection option for the project, the PHA must inspect and determine that all of the proposed PBV units fully comply with HQS before entering the HAP contract. The PHA must establish in its Administrative Plan the amount of time that may elapse between the initial inspection of existing housing and execution of a HAP contract for that unit.

(2) *Initial inspection—NLT option.* (i) A PHA may execute the HAP contract and begin making assistance payments for all of the assisted units, including units that failed the initial HQS inspection, provided that no units have life-threatening deficiencies and if the owner agrees to the NLT option. If the PHA has established and the unit is covered by both the NLT option and the alternative inspections option under paragraph (c)(3) of this section for the initial HQS inspection, see paragraph (c)(4) of this section.

(ii) After completing the inspections and determining there are no life-threatening deficiencies, for any unit with non-life-threatening deficiencies, the PHA must provide both the owner and the family (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list being offered that unit) a list of the non-life-threatening deficiencies identified by the initial HQS inspection and an explanation of the maximum amount of time the PHA will withhold HAP before abating assistance if the owner does not complete the repairs within 30 days. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will remove the unit from the HAP contract, and the family will be issued a voucher to move to another unit in order to receive voucher assistance. If the PHA's Administrative Plan provides that the PHA will terminate the PBV HAP contract if the owner fails to correct deficiencies in any unit in the project within the cure period, the PHA must also provide the notice described above to families referred to units without any deficiencies. The family referred from the waiting list

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may choose to decline the unit and remain on the waiting list. An eligible in-place family may decline the unit, and the PHA must issue the family a tenant-based voucher to move from the unit in that circumstance.

(iii) If the family decides to lease the unit, the family enters into the assisted lease with the owner. The PHA commences making assistance payments to the owner.

(iv) The owner must correct the deficiencies within 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments for the unit until the owner makes the repairs and the PHA verifies the correction. Once the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(v) The PHA must state in its Administrative Plan the maximum amount of time it will withhold payments before abating payments and the number of days after which the PHA will either terminate the PBV HAP contract or remove the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b).

(vi) The owner may not terminate the tenancy of a family because of the withholding or abatement of assistance payments. During any period the assistance is abated under the NLT option, the family may terminate the tenancy by notifying the owner and the PHA, and the PHA must provide the family tenant-based assistance. In the case of an in-place family, the family may also choose to terminate the tenancy during the withholding period following the 30-day cure period, and the PHA must offer the family either another assisted unit in the PBV project that fully complies with HQS or tenant-based assistance.

(3) *Initial inspection—alternative inspection option.* The PHA may adopt the alternative inspection option for initial inspections of existing housing, subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(i) After the PHA determines the project meets the definition of existing housing in accordance with paragraph (a) of this section, the PHA may execute the HAP contract for the project if the project has been inspected in the previous 24 months using an alternative inspection that meets the requirements of 24 CFR 982.406, as opposed to re-inspecting the project to make sure all units fully comply with HQS before executing the HAP contract, if the owner agrees to the use of the alternative inspection option. If the PHA has established and the unit is covered by both the NLT option under paragraph (c)(2) of this section and the alternative inspection option for the initial HQS inspection, see paragraph (c)(4) of this section.

(ii) The PHA notifies all families (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list being offered a contract unit) that will occupy a contract unit before the PHA conducts the HQS inspection that the alternative inspection option is in effect for the project. The PHA must provide each family with the PHA list of HQS deficiencies that are considered life-threatening as part of this notification. A family on the waiting list may decline to accept an offered unit due to unit conditions and retain its place on the PBV waiting list.

(iii) The PHA must conduct an HQS inspection within 30 days of the proposal or project selection date. If the family reports a deficiency to the PHA prior to the PHA's inspection, the PHA must inspect the unit within the time period required under paragraph (f) of this section or within 30 days of the effective date of the HAP contract, whichever time period ends first.

(iv) The PHA may not commence housing assistance payments to the owner until the PHA has inspected all the units under the HAP contract and determined they meet HQS.

(v) If the PHA inspection finds that any contract unit contains HQS deficiencies, the PHA may not make housing assistance payments to the owner until all the deficiencies have been corrected in all contract units. If a deficiency is life-threatening, the owner must correct the deficiency within 24 hours of notification from the PHA. For other deficiencies, the owner must correct the deficiency within 30 calendar days (or any PHA-approved extension) of notification from the PHA. If the owner corrects the deficiencies within the required cure period, the PHA makes the housing assistance payments retroactive to the effective date of the HAP contract or the PBV lease effective dates, whichever is later.

(vi) The PHA establishes in the Administrative Plan the maximum amount of time it will withhold payments if the owner does not correct the deficiencies within the required cure period before abating payments and the date by which the PHA will either remove the unit from the HAP contract or terminate the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b) of this title.

(vii) If the owner fails to make the repairs within the applicable time periods, the PHA must abate the payments for the non-compliant units, while continuing to withhold payments for the HQS compliant units until all the units meet HQS or the unit removal or contract termination occurs. If the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(viii) The owner may not terminate the tenancy of a family because of the withholding or abatement of assistance payments. During the abatement period, a family may terminate the tenancy by notifying the owner, and the PHA must provide the family tenant-

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based assistance. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family tenant-based assistance as provided in § 983.206(b) of this title.

(4) *Initial inspection—use of both the NLT and alternative options.* The PHA may adopt both the NLT option and the alternative inspection option for initial inspections of existing housing, subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(i) If the owner agrees to both the NLT option and the alternative inspection option, then the PHA notifies all families (any eligible in-place family (§ 983.251(d)) or any family referred from the PBV waiting list that will occupy the unit before the PHA conducts the HQS inspection) that both the NLT option and the alternative inspection option will be used for the family's unit. As part of this notification, the PHA must provide the family with the PHA's list of HQS deficiencies that are considered life-threatening. A family on the waiting list may decline to move into a unit due to unit conditions and retain its place on the PBV waiting list. Following inspection (see paragraph (c)(4)(ii) of this section), the PHA must provide any family referred from the PBV waiting list that will occupy a unit with non-life-threatening deficiencies a list of the non-life-threatening deficiencies identified by the initial HQS inspection and an explanation of the maximum amount of time the PHA will withhold HAP before abating assistance if the owner does not complete the repairs within 30 days. The PHA must also inform the family that if the family accepts the unit and the owner fails to make the repairs within the cure period, which may not exceed 180 days from the effective date of the HAP contract, the PHA will remove the unit from the HAP contract, and the family will be issued a voucher to move to another unit in order to receive voucher assistance. The family referred from the waiting list may choose to decline the unit and remain on the PBV waiting list.

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(ii) The PHA executes the HAP contract with the owner on the basis of the alternative inspection. The PHA must conduct an HQS inspection within 30 days after the proposal or project selection date. If the family reports a deficiency to the PHA during this interim period, the PHA must inspect the unit within the time period required under paragraph (f) of this section or within 30 days of the proposal or project selection date, whichever time period ends first.

(iii) The PHA may not make housing assistance payments to the owner until the PHA has inspected all the assisted units.

(iv) If none of the units have any life-threatening deficiencies, the PHA commences payments and makes retroactive payments to the effective date of the HAP contract or the PBV lease effective dates, whichever is later, for all the assisted units. For any unit that failed the PHA's HQS inspection but has no life-threatening deficiencies, the owner must correct the deficiencies within no more than 30 days from the effective date of the HAP contract. If the owner fails to correct the deficiencies within the 30-day cure period, the PHA must withhold the housing assistance payments for that unit until the owner makes the repairs and the PHA verifies the correction. Once the unit is in compliance with HQS, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(v) If any units have life-threatening deficiencies, the PHA may not commence making housing assistance payments to the owner for any units until all the HQS deficiencies (life-threatening and non-life-threatening) have been corrected. The PHA must not refer families from the PBV waiting list to occupy units with life-threatening deficiencies. The owner must correct all life-threatening deficiencies within no more than 24 hours. For other deficiencies, the owner must correct the deficiency within no more than 30 calendar days (or any PHA-approved extension). If the owner corrects all of the deficiencies within the required cure period, the PHA must make the housing assistance payments

retroactive to the effective date of the HAP contract or the PBV lease effective dates, whichever is later. If the owner fails to make the repairs within the applicable time periods, the PHA must abate the payments for the non-compliant units, while continuing to withhold payments for the HQS compliant units until all the units meet HQS or the unit removal or contract termination occurs. If the deficiencies are corrected, the PHA must use the withheld housing assistance payments to make payments for the period that payments were withheld.

(vi) The owner may not terminate the tenancy of the family because of the withholding or abatement of assistance payments. During the period the assistance is abated, a family may terminate the tenancy by notifying the owner, and the PHA must provide the family tenant-based assistance. If the PHA terminates the PBV HAP contract or removes the unit from the HAP contract as a result of the owner's failure to correct the deficiencies, the PHA must provide any affected family with tenant-based assistance as provided in § 983.206(b) of this title. The PHA must establish in its Administrative Plan:

(A) The maximum amount of time it will withhold payments if the owner fails to correct the deficiencies within the required cure period before abating payments; and

(B) The number of days after which the PHA will terminate the HAP contract or remove the unit from the HAP contract for the owner's failure to correct the deficiencies, which may not exceed 180 days from the effective date of the HAP contract.

(d) *Turnover inspections.* Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA must not provide assistance on behalf of a family for a unit that fails to comply fully with HQS.

(e) *Periodic 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 HQS. Turnover inspections pursuant to paragraph (d) of this section are not counted toward

meeting this inspection requirement. Instead of biennially, a small rural PHA, as defined in § 902.101 of this title, must inspect the random sample of units in accordance with this paragraph at least once every three years. The PHA must establish in its Administrative Plan the frequency of periodic inspections. This requirement applies in the case of a HAP contract that is undergoing development activity after HAP contract execution per § 983.157; however, if the periodic inspection occurs during the period of development activity covered by the rider and fewer than 20 percent of contract units in each building are designated in the rider as available for occupancy, the PHA is only required to inspect the units in that building that are designated as available for occupancy.

(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 alternative inspections to meet the requirements for periodic inspections in this paragraph (e), subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).

(f) *Other inspections.* (1) *Interim inspections:* When a participant family or government official notifies the PHA of a potential deficiency, the following conditions apply:

(i) *Life-threatening.* If the reported deficiency is life-threatening, the PHA must, within 24 hours, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.

(ii) *Non-life-threatening.* If the reported deficiency is non-life-threatening, the PHA must, within 15 days, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of the notification from the PHA or within any PHA-approved extension.

(iii) *Extraordinary circumstances.* In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area,

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HUD may approve an exception of the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

(2) *Follow-up inspections:* The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, except where the PHA is using a verification method as described in paragraph (h) of this section, 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) *Supervisory quality control inspections:* In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

(g) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent entity designated in accordance with §983.57, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA.

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

(h) *Verification methods.* When a PHA must verify correction of a deficiency, the PHA may use verification methods other than another on-site inspection. The PHA may establish different verification methods for initial and subsequent inspections or for different HQS deficiencies, which must be detailed in its Administrative Plan. Upon either an inspection for initial occupancy or a reinspection, the PHA may accept photographic evidence or other reliable evidence from the owner to verify that a deficiency has been corrected.

(i) *Projects with government financing.* In the case of a PBV project financed under a Federal, State, or local housing program that is subject to an alternative inspection, the PHA may rely upon inspections conducted at least

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triennially to demonstrate compliance with the alternative inspection option under paragraph (c) of this section or the periodic inspection requirement of paragraph (e) of this section, in accordance with its policy established in the PHA Administrative Plan.

[89 FR 38316, May 7, 2024]

## Subpart D—Requirements for Rehabilitated and Newly Constructed Units

SOURCE: 89 FR 38318, May 7, 2024, unless otherwise noted.

### §983.151 Applicability.

This subpart applies to development activity, as defined in §983.3, under the PBV program.

### §983.152 Nature of development activity.

(a) *Purpose of development activity.* An owner may undertake development activity, as defined at §983.3, for the purpose of:

(1) Placing a newly constructed or rehabilitated project under a HAP contract; or

(2) For a rehabilitated project that will undergo development activity after HAP contract execution, completing the requirements of the rider in accordance with §983.157.

(b) *Development requirements.* Development activity must comply with the requirements of §§983.153 through 983.157.

### §983.153 Development requirements.

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

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

tax concessions or tax credits. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from Federal, State, or local agencies, including assistance such as tax concessions or tax credits.

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

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

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

(5) The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements, unless the owner discloses additional assistance in accordance with HUD requirements. A subsidy layering review is required for newly constructed or rehabilitated housing under a HAP contract that re-

ceives additional assistance, as described in § 983.11(d).

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

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

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

(i) The owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing; and

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

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

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

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

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

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

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

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

(2) A description of any required work item resulting from this requirement must be included in the Agreement (if applicable), as specified in § 983.154(e)(7) or HAP contract (if applicable), as specified in § 983.157(e)(2).

(g) *Eligibility to participate in Federal programs and activities.* (1) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or

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

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

### § 983.154 Development agreement.

(a) *Agreement to enter into HAP contract (Agreement).* Except as specified in paragraphs (f) and (g) of this section, the PHA and owner must enter into an Agreement that will govern development activity. In the Agreement, the owner agrees to develop the contract units to comply with HQS, and the PHA agrees that, upon timely completion of such development activity in accordance with the terms of the Agreement, the PHA will enter into an initial HAP contract with the owner for the contract units. The Agreement must cover a single project, except one Agreement may cover multiple projects that each consist of a single-family building.

(b) *Timing of Agreement.* The effective date of the Agreement must be on or after the date the Agreement is executed. The Agreement must be executed and effective prior to the commencement of development activity as described in paragraph (d) of this section, except as provided in paragraphs (f) and (g) of this section, and must be in the form required by HUD (see 24 CFR 982.162(b)).

(c) *Agreement amendment.* The PHA and owner may agree to amend the contents of the Agreement described in paragraph (e) of this section by executing an addendum to the Agreement, so long as such amendments are consistent with all requirements of this

part 983. The PHA and owner may only execute an addendum affecting a unit prior to the PHA accepting the completed unit.

(d) *Commencement of development activity.* Development activity must not commence after the date of proposal submission (for housing subject to competitive selection) or the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and before the effective date of the Agreement, except as provided in paragraphs (f) and (g) of this section.

(1) In the case of new construction, development activity begins with excavation or site preparation (including clearing of the land).

(2) In the case of rehabilitation, development activity begins with the physical commencement of rehabilitation activity on the housing.

(e) *Contents of Agreement.* At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program and development activity to be performed:

(1) The site;

(2) The location of contract units on site;

(3) The number of contract units by area (square footage) and number of bedrooms and bathrooms;

(4) The services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

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

(6) A description of any required work item necessary to comply with the accessibility requirements of § 983.153(e);

(7) A description of any required work item if the requirement at § 983.153(f) to install broadband infrastructure applies;

(8) Estimated initial rents to owner for the contract units;

(9) A description of the work to be performed under the Agreement:

(i) For rehabilitation, the work description must include the rehabilitation work write-up and, where determined necessary by the PHA, specifications and plans (see paragraph (g) of this section for additional requirements that apply under the option for development activity after HAP contract at 983.157); and

(ii) For new construction, the work description must include the working drawings and specifications;

(10) The deadline for completion of the work to be performed under the Agreement; and

(11) Any requirements the PHA elects to establish in addition to HQS for design, architecture, or quality. The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(f) *PHA discretion.* With respect to development activity, the PHA may decide not to use an Agreement or may choose to execute an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced.

(1) In its Administrative Plan, the PHA must explain the circumstances (if any) under which the PHA will enter a PBV HAP contract for newly constructed or rehabilitated housing without first entering into an Agreement and under which the PHA will enter into an Agreement after construction or rehabilitation that complied with applicable requirements of § 983.153 has commenced.

(2) The following conditions apply:

(i) The owner of the project must be able to document its compliance with all applicable requirements of § 983.153 from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection);

(ii) For housing subject to competitive selection, the PHA must confirm prior to the proposal selection date that the owner has complied with all applicable requirements of § 983.153 from the date of proposal submission. For housing excepted from competitive selection, the PHA must confirm prior

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to executing the Agreement (if applicable) or HAP contract that the owner has complied with all applicable requirements of § 983.153 from the date of the PHA's board resolution approving the project-basing of assistance at the project; and

(iii) The PHA must comply with the notice requirement of § 983.153(c)(3).

EFFECTIVE DATE NOTE: At 89 FR 38293, May 7, 2024, § 982.4 was amended, effective date delayed indefinitely.

### § 983.155 Completion of work.

(a) *General requirement.* The owner must submit evidence and certify to the PHA, in the form and manner required by the PHA's Administrative Plan, that development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212 has been completed, and that all such work was completed in accordance with the applicable requirements. The PHA must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

(b) *PHA-owned units.* In the case of PHA-owned units, the owner must submit evidence and certify to the independent entity (see § 983.57(b)(3)), in the form and manner required by the PHA's Administrative Plan, that development activity under § 983.152 or substantial improvement under §§ 983.207(d) or 983.212 has been completed, and that all such work was completed in accordance with the applicable requirements. The independent entity must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

### § 983.156 PHA acceptance of completed units.

(a) *Inspection of units.* After the PHA has received all required evidence of completion and the owner's certification that all work was completed in accordance with the applicable requirements, the PHA must inspect the completed units to determine whether they comply with HUD's HQS (see § 983.103(b)) and any additional design,

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architecture, or quality requirements specified by the PHA.

(b) *Execution or amendment of the HAP contract.* If the PHA determines that the development activity or substantial improvement was completed in accordance with the applicable requirements at § 983.155 and the completed units meet HUD's HQS and any additional design, architecture, or quality requirements specified by the PHA per paragraph (a) of this section, then the PHA must:

(1) For units developed pursuant to § 983.152(a)(1) which will not undergo development activity after HAP contract execution per § 983.157, submit the HAP contract for execution by the owner and execute the HAP contract;

(2) For rehabilitated housing projects for which development activity has commenced prior to HAP contract execution, but which will undergo development activity after HAP contract execution under § 983.157(b), submit the HAP contract for execution by the owner and execute the HAP contract;

(3) For development activity conducted after HAP contract execution, amend the HAP contract rider to designate the completed units as available for occupancy (§ 983.157(f)(1)(ii)) or, if the owner has completed all development activity as provided in the rider, amend the HAP contract to terminate the rider (§ 983.157(d)); or

(4) For units that underwent substantial improvement in order to be added to the HAP contract, amend the HAP contract to add the units to the HAP contract (§ 983.207(d)).

(c) *Staged completion of contract units.* Contract units developed pursuant to § 983.152(a)(1) which will not undergo development activity after HAP contract execution per § 983.157 may be placed under the HAP contract in stages commencing on different dates. In such a case, the PHA must determine separately for each stage whether the development activity was completed in accordance with the applicable requirements per § 983.155 and that the units meet HUD's HQS and any additional design, architecture, or quality requirements specified by the PHA per paragraph (a) of this section. If the first stage is determined compliant, then the PHA must submit the HAP

contract for execution by the owner and must execute the HAP contract for PBV rehabilitated housing and newly constructed housing projects. As each subsequent stage is determined compliant, the PHA and owner must amend the HAP contract to add the units to the HAP contract (see § 983.207(g)).

(d) *PHA-owned units.* The independent entity must perform the inspection required in paragraph (a) of this section and make the determination(s) required in paragraphs (b) and (c) of this section in the case of PHA-owned units (see § 983.57(b)(3)).

**§ 983.157 Rehabilitated housing: option for development activity after HAP contract execution.**

(a) *PHA discretion.* (1) The PHA may allow an owner of a rehabilitated housing project to conduct some or all of the development activity during the term of the HAP contract, as provided in this section. Under this option, the PHA and owner place all proposed PBV units under the HAP contract at the time provided in paragraph (c) of this section and before the owner completes development activity. During the period of development activity, the PHA makes assistance payments to the owner for the contract units that are occupied and meet HQS.

(2) In its Administrative Plan, the PHA must explain the circumstances (if any) under which the PHA will enter a PBV HAP contract for rehabilitated housing that allows for development activity on contract units. The Administrative Plan may provide for execution of HAP contracts in accordance with this section prior to commencement of development activity, following commencement of development activity, or both. When the PHA uses the competitive selection method at § 983.51(b)(1), the PHA's policy must be disclosed in the request for proposals.

(b) *Projects that have commenced rehabilitation.* If the PHA allows for execution of a HAP contract following commencement of development activity, the following requirements apply to the development activity that occurs before HAP contract execution:

(1) For rehabilitation undertaken under an Agreement, the development activity must have complied with the

Agreement executed pursuant to § 983.154, including completion of any work items and completion and acceptance of any units which were to be completed under the Agreement under §§ 983.155 and 983.156; or

(2) For rehabilitation undertaken without an Agreement pursuant to § 983.154(f):

(i) The owner of the project must be able to document its compliance with all applicable requirements of § 983.153 from the date of proposal submission (for housing subject to competitive selection) or from the date of the PHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection); and

(ii) For housing subject to competitive selection, the PHA must confirm prior to the proposal selection date that the owner has complied with all applicable requirements of § 983.153 from the date of proposal submission. For housing excepted from competitive selection, the PHA must confirm prior to executing the HAP contract that the owner has complied with all applicable requirements of § 983.153 from the date of the PHA's board resolution approving the project-basing of assistance at the project.

(c) *Timing of HAP contract execution.* The PHA may execute the HAP contract for a project covered by this section after all of the following have occurred:

(1) The applicable requirement of § 983.56(d) (environmental review) has been met;

(2) If applicable, the subsidy layering review has been completed, in accordance with § 983.153(b)(2);

(3) If applicable, the PHA has determined that development activity that has commenced met the requirements of paragraph (b) of this section;

(4) The PHA has conducted an inspection (see § 983.103(b)(2)) of all units that the owner proposes to make available for occupancy by an assisted family at the beginning of the HAP contract term and the PHA has determined that at least one of those proposed contract units, including items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24

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CFR 5.703(a)(2), fully complies with HQS. The PHA may make the determination of compliance with HQS regardless of whether the HQS-compliant unit is expected to undergo rehabilitation. The owner may make repairs to correct HQS deficiencies identified during the PHA inspection as part of the development activity that occurs prior to HAP contract execution (see paragraph (b) of this section) to make the unit available for occupancy at the beginning of the HAP contract term. The PHA must establish in its Administrative Plan the amount of time that may elapse between the inspection and the execution of the HAP contract; and

(5) Occupants (if any) of proposed PBV units that were not inspected pursuant to paragraph (c)(4) of this section or that do not fully comply with HQS have moved and such units are vacant. These units must be identified as unavailable for occupancy in accordance with paragraph (e)(5)(ii) of this section. Any inspected unit that does not fully comply with HQS must undergo development activity, followed by inspection under §983.156(a), prior to being designated for occupancy under paragraph (f)(1)(ii) of this section.

(6) Occupants (if any) who do not accept PBV assistance have moved and such units are vacant.

(7) The PHA may decline to place proposed PBV units that do not meet the criteria in paragraphs (c)(5) or (6) of this section on the HAP contract in order to execute the HAP contract before the units have been vacated. The PHA may add the units to the HAP contract once the units are vacant in accordance with §983.207, except that the inspection requirement of §983.207 does not apply if the unit will initially be categorized as unavailable for occupancy as provided in paragraph (e)(5)(ii) of this section.

(d) *HAP contract requirements.* The PHA and owner must execute the HAP contract (see §983.204(c)) with a rider to the HAP contract that will govern development activity occurring during the term of the HAP contract. The contents of the HAP contract apply and are supplemented by the additional terms and conditions provided in the rider during the period the rider is in effect. When executing the HAP con-

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tract and rider, the PHA and owner complete the information in the HAP contract as provided in §983.203 in addition to the information in the rider as provided in paragraph (e) of this section. The rider must be in the form required by HUD (see 24 CFR 982.162(b)). In the rider, the owner agrees to develop the contract units to comply with HQS, and the PHA agrees that, upon timely completion of such development activity in accordance with the terms of the rider, the rider will terminate and the HAP contract will remain in effect. The PHA determination that development activity has been completed and the rider may be terminated is made when all work has been completed in accordance with the applicable requirements at §983.155 and all contract units fully comply with HQS, as provided in §983.156(b)(3).

(e) *Contents of HAP contract rider.* At a minimum, the rider must describe the following features of the housing to be rehabilitated and assisted under the PBV program and development activity to be performed:

(1) A description of any required work item necessary to comply with the accessibility requirements of §983.153(e);

(2) A description of any required work item if the requirement at §983.153(f) to install broadband infrastructure applies;

(3) A description of the work to be performed under the rider, including the rehabilitation work write-up and, where determined necessary by the PHA, specifications and plans;

(4) Any requirements the PHA elects to establish in addition to HQS for design, architecture, or quality. The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(5) The development status of each specific contract unit. Specifically:

(i) The rider must list each unit that is available for occupancy by an assisted family at the time the unit is placed on the HAP contract. Each contract unit that fully complies with HQS in accordance with the PHA determination under paragraph (c)(4) of this section and that the owner will make available for occupancy by an assisted

family must be initially categorized as available for occupancy. For each unit that is available for occupancy, the rider must specify whether the owner will undertake development activity in the unit after it is occupied by an assisted family. The owner may initiate the development activity in the unit while it is occupied, subject to paragraph (g)(6) of this section, or when it becomes vacant, which may change the status of the unit for purposes of this paragraph. The owner must promptly notify the PHA of any change in the status of each unit throughout the period of development activity, in the form and manner required by the PHA's Administrative Plan;

(ii) The rider must list each unit that is unavailable for occupancy at the time the unit is placed on the HAP contract. Each contract unit that has not been inspected in accordance with paragraph (c)(4) of this section or that has been inspected and did not fully comply with HQS must be initially categorized as unavailable for occupancy. The owner must promptly notify the PHA of any change in the status of each unit throughout the period of development activity, in the form and manner required by the PHA's Administrative Plan; and

(6) The deadline for completion of the work to be performed under the rider, which must be no more than five years from the date the HAP contract is effective (the five-year maximum includes any extensions granted by the PHA).

(f) *Contract and rider amendment.* In general, the PHA and owner may agree to amend the contents of the rider described in paragraph (e) of this section by executing an addendum to the rider, so long as such amendments are consistent with all requirements of this part 983. However, the following requirements apply:

(1) In the case of additions or substitutions of units, the provisions of § 983.207 apply, except:

(i) The PHA and owner must also amend the rider to update the information described in paragraph (e)(5) of this section;

(ii) The units to be added must not undergo repairs or renovation prior to

amending the PBV HAP contract to add the unit; and

(iii) Addition of a unit is prohibited while the rider is in effect if such addition will increase the number of contract units from eight or fewer units to nine or more units.

(2) The PHA and owner may only execute an addendum amending the items in paragraphs (e)(1)–(4) of this section affecting a unit prior to the PHA accepting the completed unit.

(g) *Occupancy of units during rehabilitation period.* The following requirements apply with respect to contract units that are available for occupancy at the time that the HAP contract is executed and during the period of development activity covered by the rider in accordance with paragraph (d) of this section:

(1) The PHA must select families as provided in § 983.251 for PBV assistance in a contract unit that is available for occupancy. Upon PHA acceptance of a completed unit (see § 983.156(b)(3)) that is vacant, the PHA may either select a family from the waiting list for PBV assistance in the newly completed unit or offer to transfer a family assisted in a different contract unit to the newly completed unit as described in paragraph (g)(6)(iii) of this section.

(2) The PHA may refer a family for occupancy of a contract unit only if the unit fully complies with HQS as determined by the PHA inspection.

(3) The PHA must provide a notice to the family upon selection explaining:

(i) The expected nature and duration of the development activity at the project;

(ii) That if the family accepts the unit and the owner fails to complete the development activity in accordance with applicable requirements, the PHA may terminate the HAP contract, in which case the family will be issued a tenant-based voucher and may be able to remain in the project with tenant-based assistance (see § 983.206(b));

(iii) If development activity is expected to occur in the family's unit per paragraph (e)(5) of this section, that the family may be required to vacate the unit temporarily or with continued voucher assistance;

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(iv) That the family may choose to decline the unit and remain on the waiting list; and

(v) If applicable, in the case of an eligible in-place family, that the family may choose not to accept PBV assistance in the unit.

(4) The PHA must conduct periodic and other inspections on occupied contract units in accordance with the requirements of §983.103(e) and (f) and must vigorously enforce the owner's obligation to maintain contract units occupied by an assisted family in accordance with the requirements of §983.208.

(5) The PHA makes payments to the owner for occupied units as provided in §983.351.

(6) When an owner will undertake development activity in a unit currently occupied by an assisted family as provided in paragraph (e)(5) of this section, the requirements of this paragraph (g)(6) govern where the family will live during the rehabilitation. For purposes of this paragraph, all references to the HQS applicable to the unit include items and components within the primary and secondary means of egress, common features, and systems equipment as described by 24 CFR 5.703(a)(2).

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

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

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

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

(ii) If the conditions for in-place development activity in paragraph (g)(6)(i) of this section cannot be achieved, the owner must temporarily relocate the family to complete the development activity if:

(A) The PHA reasonably expects that the owner can complete the relocation and development activity within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month); and

(B) The family can be relocated to a location and in a manner mutually agreeable to the owner and the family; and

(iii) If the conditions for in-place development activity in paragraph (g)(6)(i) of this section and temporary relocation in paragraph (g)(6)(ii) of this section cannot be achieved, the following protocol for lease termination and relocation applies:

(A) If there are contract units within the project that are designated as available for occupancy and that are vacant or expected to become vacant at the time of the planned lease termination, the PHA must refer the family to the owner for occupancy of an appropriate-size contract unit. If the family accepts the offered unit, the owner must provide the family with a reasonable time to move to the offered unit, must pay the family's reasonable moving expenses, must execute a lease with the family for the offered unit to be effective at the time of the family's move, and must terminate the lease for the family's original unit at the time of the family's move. The owner must terminate the family's lease if the family rejects the offered unit; however, the PHA must first offer the family a different unit or tenant-based assistance under paragraph (g)(6)(iii)(B) of this section if needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities. The PHA must consider other family requests for a different unit or tenant-based assistance under paragraph (g)(6)(iii)(B) of this section;

(B) If no other contract unit within the project is available for the family to lease during the period of development activity, the PHA must issue the family a tenant-based voucher. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (e.g., an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. The PHA may also issue the family a tenant-based voucher to accommodate the family's need or request as provided in

paragraph (g)(6)(iii)(A) of this section. The PHA must issue the voucher no fewer than 90 calendar days prior to the planned lease termination. If the family is eligible and willing to request a voucher to move in accordance with § 983.261, the PHA must issue the family the voucher to move under that section. If the family is not eligible or is unwilling to request a voucher to move under § 983.261, the PHA must remove the family's unit from the PBV HAP contract and issue the family its voucher to move with tenant-based assistance and subsequently add a unit back to the PBV HAP contract at the earlier of the time that the PHA has an authorized voucher unit available or the time that the unit is ready for occupancy. The PHA must extend the voucher term until the family either leases a unit with the tenant-based voucher or accepts a contract unit, whichever occurs first;

(C) If the family moves from the project in order for the owner to undertake development activity in the family's unit, the PHA must offer the family the option to return to the project with PBV assistance, if the family is eligible for PBV assistance, following completion of development activity at the project. The PHA, or owner in the case of an owner-maintained waiting list, must place the family on the PBV waiting list with an absolute selection preference for occupancy in the project; and

(D) If the family moves from the project in order for the owner to undertake development activity in the family's unit, the PHA must not refer any family for occupancy of the unit until after rehabilitation of the unit and PHA acceptance of the completed unit (see § 983.156(b)(3)).

(h) *Owner breach.* The owner's failure to complete the development activity as provided in the rider is a breach of the HAP contract and may result in the termination of the HAP contract, in accordance with the following requirements:

(1) If the owner has not completed the development activity by the deadline specified in the rider, which includes any extensions granted by the PHA, (see paragraph (e)(6) of this section), the PHA may grant an additional

period for compliance to allow the owner more time to complete the development activity. The granting of any such period must be consistent with the PHA's Administrative Plan and must not exceed 180 days. If the owner has not completed the development activity following the period for compliance, the PHA must terminate the contract. In addition to termination, the PHA may exercise any of its other rights or remedies under the HAP contract. At HUD's sole discretion, HUD may approve a PHA's request for an extension of the period for compliance beyond 180 days. In determining whether to approve the PHA request, HUD will consider appropriate factors, including any extenuating circumstances that contributed to the delay.

(2) The owner's failure to comply with the development requirements of § 983.153 constitutes a breach of the HAP contract (see § 983.206(c)(2)). In the event that the owner's failure constituted only a de minimis error in the owner's compliance with the development requirements of § 983.153, the PHA may decide to take an action other than termination of the HAP contract. In all other cases, the PHA must terminate the HAP contract, in addition to any other rights and remedies the PHA chooses to exercise under the HAP contract.

(i) *PHA-owned units.* For PHA-owned units, the independent entity must perform the inspections required under paragraphs (b)(1) and (g) of this section and make the determinations in paragraphs (g)(6)(i) and (g)(6)(ii)(A) when the owner will undertake development activity in a unit currently occupied by an assisted family, as applicable.

[89 FR 38321, May 7, 2024]

EFFECTIVE DATE NOTE: At 89 FR 38321, May 7, 2024, § 983.157 was added, effective date delayed indefinitely.

## 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

### § 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. Except as provided in this paragraph, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. However, a PHA and owner may agree to place multiple projects, each consisting of a single-family building, under one 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; 89 FR 38324, May 7, 2024]

### § 983.203 HAP contract information.

The HAP contract must specify:

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

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

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

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

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

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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, the Fair Housing Act, and the Americans with Disabilities Act, as applicable;

(g) The HAP contract term;

(h) The number of contract units under the increased program cap (as described in §983.6(d)) or excepted from the project cap (as described in §983.54(c)) which will be set aside for occupancy by families who qualify for such a unit;

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

(j) Whether the PHA has elected not to reduce rents below the initial rent to owner in accordance with 24 CFR 983.302(c)(2).

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36167, June 25, 2014; 89 FR 38324, May 7, 2024]

### § 983.204 Execution of HAP Contract or PHA-owned Certification.

(a) *PHA inspection of housing.* Before execution of the HAP contract, the PHA must determine that applicable pre-HAP contract HQS requirements have been met in accordance with §983.103(b) or (c) as applicable. The PHA may not execute the HAP contract for any contract unit that does not meet the pre-HAP contract HQS requirements, except as provided in paragraph (c).

(b) *Existing housing.* For existing housing, the HAP contract must be executed and effective promptly after PHA selection of the owner proposal and PHA determination that the applicable pre-HAP contract HQS requirements have been met.

(c) *Newly constructed or rehabilitated housing.* For newly constructed or rehabilitated housing developed pursuant to §983.152(a)(1) which will not undergo development activity after HAP contract execution per §983.157, the HAP contract must be executed and effective promptly after the PHA determines that the housing was completed

in accordance with the applicable requirements, HUD's HQS, and any additional design, architecture, or quality requirements specified by the PHA, in accordance with § 983.156(b)(1) or (c). For rehabilitated housing that will undergo development activity after HAP contract execution per § 983.157, the HAP contract must be executed and effective promptly after the requirements of § 983.157(c) are met (all proposed PBV units are added to the contract at this time, including units that do not comply with HQS or that will undergo development activity).

(d) *Effective date of the PBV HAP contract.* The effective date of the HAP contract must be on or after the date the HAP contract is executed. The HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family, and the PHA may not pay any housing assistance payment to the owner until the HAP contract is effective.

[89 FR 38324, May 7, 2024]

EFFECTIVE DATE NOTE: At 89 FR 38325, May 7, 2024, § 983.204 was amended, effective date delayed indefinitely.

#### § 983.205 Term of HAP contract.

(a) *Initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 20 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 20 years.

(b) *Extension of term.* The PHA and owner may agree at any time before expiration of the HAP contract to execute one or more extensions of the HAP contract term. The following conditions apply:

(1) Each extension executed must have a term that does not exceed 20 years;

(2) At no time may the total remaining term of the HAP contract, with extensions, exceed 40 years;

(3) Before agreeing to an extension, the PHA must determine that the extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities; and

(4) Each extension must be on the form and subject to the conditions pre-

scribed by HUD at the time of the extension.

[89 FR 38325, May 7, 2024]

#### § 983.206 Contract termination or expiration and statutory notice requirements.

(a) *Nonextension by owner—notice requirements.* (1) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(2) Not less than one year before termination of a PBV HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(3) The term “termination” for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of PHA and owner per paragraph (e) of this section, or an owner’s refusal to renew the HAP contract.

(4) If an owner fails to provide the required 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 an owner’s inability to collect an increased tenant portion of rent.

(5) An owner and PHA may agree to extend the terminating contract for a period of time sufficient to provide tenants with the required notice, under such terms as HUD may require.

(b) *Termination or expiration without extension—required provision of tenant-based assistance.* Unless a termination or expiration without extension occurs due to a determination of insufficient funding pursuant to paragraph (c)(1) of this section or other extraordinary circumstances determined by HUD, the PHA shall issue each family occupying a contract unit a tenant-based voucher based on the termination or expiration of the contract no fewer than 60 calendar days prior to the planned termination or expiration of the PBV HAP contract. However, the PHA is not required to issue the family a voucher if the PHA has offered the family an alternative housing option (e.g., an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher. Such a family is not a new

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admission to the tenant-based program and shall not count toward the PHA's income-targeting requirements at 24 CFR 982.201(b)(2)(i). The voucher issued to the family is the voucher attached to its unit under the expiring or terminating PBV contract. Consequently, if the family vacates the contract unit following the issuance of the tenant-based voucher and prior to the contract termination or expiration date, the PHA must remove the unit from the PBV HAP contract at the time the family vacates the unit. The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project, subject to the following:

(1) The unit must comply with HUD's HQS;

(2) The PHA must determine or have determined that the rent for the unit is reasonable;

(3) The family must pay 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 (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy shall not apply); and

(4) The owner may not refuse to initially lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the following grounds:

(i) The grounds in 24 CFR 982.310 of this title, except paragraphs 24 CFR 982.310(d)(1)(iii) and (iv);

(ii) The owner's desire to use the unit for a purpose other than a residential rental unit; and

(iii) The owner's desire to renovate the unit, subject to the following:

(A) The owner must consider whether a reasonable alternative to terminating the lease exists. If a reasonable alternative exists, the owner must not

terminate the lease. The owner must consider the following alternatives:

(1) Completing renovations without the family vacating the unit, if the renovations can be completed in a manner that does not result in life-threatening conditions, does not result in deficiencies under HQS that are not corrected within 30 days, and is mutually agreeable to the owner and the family; and

(2) Temporarily relocating the family to complete the renovations, if the relocation and renovations can be completed within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month) and the family can be relocated to a location and in a manner mutually agreeable to the owner and the family;

(B) If the owner terminates the lease for renovation, the owner must make every reasonable effort to make available and lease the family another unit within the project that meets the tenant-based voucher program requirements; and

(C) If no other unit within the project is available for the family to lease during the renovation period or the family chooses to move from the project during the renovation period, the owner must make every reasonable effort to make available and lease the family a unit within the project upon completion of renovations.

(c) *Termination by PHA.* (1) The HAP contract must provide that the PHA may terminate the contract for insufficient funding, subject to HUD requirements.

(i) Consistent with the policies in the PHA's Administrative Plan, the PHA has the option of terminating a PBV HAP contract based on "insufficient funding" only if:

(A) The PHA determines in accordance with HUD requirements that it lacks sufficient HAP funding (including HAP reserves) to continue to make housing assistance payments for all voucher units currently under a HAP contract;

(B) The PHA has taken cost-saving measures specified by HUD;

(C) The PHA notifies HUD of its determination and provides the information required by HUD; and

(D) HUD determines that the PHA lacks sufficient funding and notifies the PHA it may terminate HAP contracts as a result.

(2) If the PHA determines that the owner has breached the HAP contract, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. The provisions of § 983.208 apply for HAP contract breaches involving failure to comply with HQS. For any other contract termination due to breach, paragraph (b) of this section on provision of tenant-based assistance applies.

(d) *Termination by owner—reduction below initial rent.* 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, the owner may terminate the HAP contract, upon notice to the PHA no fewer than 90 calendar days prior to the planned termination, and families must be provided tenant-based assistance and may elect to remain in the project in accordance with paragraph (b) of this section. The owner is not required to provide the one-year notice of the termination of the HAP contract to the family and the PHA, as described in paragraph (a) of this section, when terminating the HAP contract due to rent reduction below the initial rent to owner.

(e) *Termination by agreement of PHA and owner.* The PHA and owner may agree to terminate the HAP contract prior to the end of the term. The owner's notice in paragraph (a) of this section is required prior to termination, and the families must be provided tenant-based assistance and may elect to remain in the project in accordance with paragraph (b) of this section.

[89 FR 38325, May 7, 2024]

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

(a) *Amendment to substitute contract units.* At the discretion of the PHA, the PHA and owner may execute an amendment to the HAP contract to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Prior to such substitution,

the PHA must inspect the proposed substitute unit (the unit must comply with HQS to be substituted) and must determine the reasonable rent for such unit (the rent to owner must be reasonable for the unit to be substituted). The proposed substituted unit may be vacant or, subject to the requirements of paragraph (c) of this section, it may be occupied. The proposed substituted unit may undergo repairs or renovation prior to amending the PBV HAP contract to substitute the unit, as provided in paragraph (d) of this section. The proposed substituted unit must have existed at the time described in paragraph (e) of this section.

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

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

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

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

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

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

(c) *Substituting or adding occupied units.* The PHA may place occupied

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units on the HAP contract under paragraphs (a) or (b) of this section, subject to the following:

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

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

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

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

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

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

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

(1) The substantial improvement must not proceed prior to the first two years of the effective date of the HAP

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contract, except in extraordinary circumstances (e.g., the units were damaged by fire, natural disaster, etc.).

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

(3) As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to substantial improvement.

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

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

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

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

(5) An owner or project principal who is on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs, or who is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, may not participate in substantial improvement. The

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

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

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

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

(9) Paragraphs (a), (b)(4), and (d) of § 983.156, PHA acceptance of completed units, apply.

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

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

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

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

(f) *Administrative Plan requirement.* The PHA must describe in the Administrative Plan the circumstances under which it will add or substitute contract units, and how those circumstances support the goals of the PBV program.

(g) *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 con-

tract 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.

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

[89 FR 38326, May 7, 2024]

#### **§ 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 contract term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with HUD's HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified by the PHA (§ 983.204(c)). The PHA must specify the conditions under which it will require additional housing quality requirements in the Administrative Plan.

(b) *Enforcement of HQS.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with HUD's HQS. If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take enforcement action in accordance with this section.

(2) The unit is in noncompliance with HQS if:

(i) The PHA or other inspector authorized by the State or local government determines the unit has HQS deficiencies based upon an inspection;

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(ii) The agency or inspector notifies the owner in writing of the unit HQS deficiencies; and

(iii) The unit HQS deficiencies are not remedied within the following timeframes:

(A) For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification.

(B) For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable PHA-approved extension).

(3) In the case of an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the PHA may terminate assistance to a family because of an HQS breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

(4) In the case of an HQS deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the PHA may permit the owner to undertake substantial improvement in accordance with § 983.212. However, so long as the contract unit with deficiencies is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

(5) In the case of a project that is undergoing development activity after HAP contract execution per § 983.157, the remedies of paragraph (d) of this section do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

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(c) *Family obligation.* (1) The family may be held responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the tenant;

(ii) The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the tenant; or

(iii) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(2) If the PHA has waived the owner's responsibility to remedy the violation in accordance with paragraph (b)(3) of this section, the following applies:

(i) If the HQS breach caused by the family is life-threatening, the family must take all steps permissible under the lease and State and local law to ensure the deficiency is corrected within 24 hours of notification.

(ii) For other family-caused deficiencies, the family must take all steps permissible under the lease and State and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any PHA-approved extension).

(3) If the family has caused a breach of the HQS, the PHA must take prompt and vigorous action to enforce the family obligations. The PHA may terminate assistance for the family in accordance with 24 CFR 982.552.

(d) *PHA remedies.* These remedies apply when HQS deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection. (See § 983.103 generally, and see § 983.103(c) in particular for PHA enforcement actions related to the initial HQS inspection for existing housing). The PHA must identify in its Administrative Plan the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the HAP contract for units other than the unit with HQS deficiencies.

(1) A PHA may withhold HAP for an individual unit that has HQS deficiencies once the PHA has notified the owner in writing of the deficiencies. If

the unit is brought into compliance during the applicable cure period (within 24 hours from notification for life-threatening deficiencies and within 30 days from notification (or other reasonable period established by the PHA for non-life-threatening deficiencies), the PHA:

(i) Must resume assistance payments; and

(ii) Must provide assistance payments to cover the time period for which the assistance payments were withheld.

(2)(i) The PHA must abate the HAP, including amounts that had been withheld, for the PBV unit with deficiencies if the owner fails to make the repairs within the applicable cure period (within 24 hours from notification for life-threatening deficiencies and within 30 days from notification (or other reasonable period established by the PHA) for non-life-threatening deficiencies).

(ii) The PHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the HQS, even if some of the contract units continue to meet HQS.

(iii) If a PHA abates the HAP for a unit, the PHA must notify the family and the owner that it is abating payments and that if the unit with deficiencies does not meet HQS within 60 days after the determination of non-compliance (or a reasonable longer period established by the PHA), the PHA will either terminate the HAP contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with HQS will have to move if the family wishes to receive continued assistance.

(3) An owner may not terminate the tenancy of any family due to the withholding or abatement of assistance. During the period that assistance is abated, the family may terminate the tenancy by notifying the owner. The PHA must promptly issue the family a tenant-based voucher to move.

(4) If the owner makes the repairs and the unit complies with HQS within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must recommence payments to the owner if the

unit is still occupied by an assisted family. The PHA does not make any payments for the unit to the owner for the period of time that the payments were abated.

(5) If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety. The PHA must issue the family whose unit will be removed or all families residing in contract units, if the PHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project in accordance with § 983.206(b) if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain.

(6)(i) The PHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated under this paragraph (d) due to a failure to correct HQS deficiencies at least 90 days or a longer period as the PHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

(ii) If the family is unable to lease a new unit within the period provided by the PHA under paragraph (d)(6)(i) of this section and the PHA owns or operates public housing, the PHA must offer, and, if accepted, provide the family a selection preference for an appropriate-size public housing unit that first becomes available for occupancy after the time period expires.

(iii) PHAs may assist families relocating under this paragraph (d) in finding a new unit, including using up to 2 months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, including security deposits, temporary housing costs, or other reasonable moving costs as determined by the

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PHA based on their locality. PHAs must assist families with disabilities in locating available accessible units in accordance with 24 CFR 8.28(a)(3). If the PHA uses the withheld and abated assistance payments to assist with the family's relocation costs, the PHA must provide security deposit assistance to the family as necessary. If the family receives security deposit assistance from the PHA for the new unit, the PHA may require the family to remit the security deposit returned by the owner of the new unit at such time that the lease is terminated, up to the amount of the security deposit assistance provided by the PHA for that unit. The PHA must include in its Administrative Plan the policies it will implement for this provision.

(e) *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.

(f) *Applicability.* This section is applicable to HAP contracts executed on or after or extended on or after June 6, 2024. For purposes of this paragraph, a HAP contract is extended the earlier of the effective date of the next extension period or the date the PHA and owner agree to the next extension. For all other HAP contracts, § 983.208 as in effect on June 5, 2024 remains applicable. However, the PHA and owner may agree to apply this section to a HAP contract executed before June 6, 2024 prior to extension.

[70 FR 59913, Oct. 13, 2005. Redesignated at 79 FR 36168, June 25, 2014; 89 FR 38328, May 7, 2024]

### § 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:

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(a) The owner is maintaining the premises and all contract units in accordance with HUD's HQS under the requirements of this part 983.

(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 or selected from the owner-maintained waiting list in accordance with § 983.251, 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, except as provided in §§ 983.157(g)(6)(ii) and 983.212(a)(3)(ii).

(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 unless needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities.

(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.

[70 FR 59913, Oct. 13, 2005. Redesignated and amended at 79 FR 36168, June 25, 2014; 89 FR 38329, May 7, 2024]

**§ 983.211 Removal of unit from HAP contract based on a family's increased income.**

(a) *Removal of a unit based on a family's increased income.* Units occupied by families whose income has increased during their tenancy resulting in the total tenant payment equaling the gross rent shall be removed from the HAP contract 180 days following the last housing assistance payment on behalf of the family.

(b) *Reinstatement or substitution of HAP contracts.* 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. A reinstatement or substitution of units under the HAP contract, in accordance with this paragraph, must be permissible under § 983.207(b) or (a), respectively.

(c) *Additional requirements.* The anniversary and expirations dates of the reinstated or substituted unit must be the same as all other units under the HAP contract (*i.e.*, the annual anniversary and expiration dates for the first contract units placed under the HAP contract). Families must be selected in accordance with program requirements under § 983.251 of this part.

[89 FR 38329, May 7, 2024]

**§ 983.212 Substantial improvement to units under a HAP contract.**

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

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

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

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

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

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

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

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- (A) Does not result in life-threatening deficiencies;
- (B) Does not result in any other deficiencies under the HQS that are not corrected within 30 days; and
- (C) Is mutually agreeable to the owner and the family;
  - (ii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section cannot be achieved, the owner must temporarily relocate the family to complete the substantial improvement if:
    - (A) The PHA reasonably expects that the owner can complete the relocation and substantial improvement within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month); and
    - (B) The family can be relocated to a location and in a manner mutually agreeable to the owner and the family; and
    - (iii) If the conditions for in-place substantial improvement in paragraph (a)(3)(i) of this section and temporary relocation in paragraph (a)(3)(ii) of this section cannot be achieved, the following protocol for lease termination and relocation applies:
      - (A) If there are contract units within the project will meet HQS during the period of substantial improvement and that are vacant or expected to become vacant at the time of the planned lease termination, the PHA must refer the family to the owner for occupancy of an appropriate-size contract unit. If the family accepts the offered unit, the owner must provide the family with a reasonable time to move to the offered unit, must pay the family's reasonable moving expenses, must execute a lease with the family for the offered unit to be effective at the time of the family's move, and must terminate the lease for the family's original unit at the time of the family's move. The owner must terminate the family's lease if the family rejects the offered unit; however, the PHA must first offer the family a different unit or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section if needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person

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with disabilities. The PHA must consider other family requests for a different unit or tenant-based assistance under paragraph (a)(3)(iii)(B) of this section;

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

(C) If the family moves from the project during the period of substantial improvement, the PHA must offer the family the option to return to the project with PBV assistance, if the family is eligible for PBV assistance, following completion of substantial improvement at the project. The PHA, or owner in the case of an absolute selection preference for occupancy in the project.

(4) The PHA must abate housing assistance payments for a unit beginning at the time the unit has any deficiency under HUD's HQS during the period of substantial improvement. The timing for the PHA to begin withholding and abatement specified in § 983.208(d) does not apply to deficiencies occurring during the period of substantial improvement. When all deficiencies in the unit are corrected, the PHA must recommence payments to the owner if the unit is still occupied by an assisted family, subject to paragraphs (a)(5) and (b)(1) of this section. Additionally, the PHA must not pay vacancy payments during the period of substantial improvement.

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

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

(2) As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131–12134) and implementing regulations at 28 CFR part 35, including §§ 35.150 and 35.151, apply to substantial improve-

ment undertaken on units that are currently under a HAP contract.

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

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

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

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

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

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

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

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

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

(c) *PHA-owned units.* For PHA-owned units, the independent entity must determine whether to approve the PHA proposal to undertake substantial improvement as provided in paragraph (a) of this section, including making the determinations in paragraphs (a)(3)(i) and (a)(3)(ii)(A) when the owner will undertake substantial improvement in a unit currently occupied by an assisted family, as applicable (see § 983.57(b)(4)). The independent entity must approve the proposal if:

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

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

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

[89 FR 38329, May 7, 2024]

## 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, using information received and verified by the PHA within a period of 60 days before commencement of PBV assistance. For all families, the PHA must determine the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP.

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(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 under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities.

(b) *Protection of in-place families.* (1) To minimize displacement of in-place families, if an in-place family is determined to be eligible prior to placement of the family's unit on the HAP contract, the in-place family must be placed on the PBV waiting list (if the family is not already on the list) and given an absolute selection preference. If the PHA's waiting list for PBV assistance is not a project-specific waiting list, the PHA must refer the family to the applicable project owner for an appropriate-size PBV unit in the specific project.

(2) If the in-place family is a tenant-based voucher participant, program eligibility is not re-determined. However, the PHA must determine that the total tenant payment for the family is less than the gross rent for the unit, such that the unit will be eligible for a monthly HAP, and the PHA may deny or terminate assistance for the grounds specified in 24 CFR 982.552 and 982.553.

(3)(i) During the initial term of the lease under the tenant-based tenancy, an in-place tenant-based voucher family may agree, but is not required, to mutually terminate the lease with the owner and enter into a lease and tenancy under the PBV program. If the family chooses to continue the tenant-based assisted tenancy, the unit may not be added to the PBV HAP contract. The owner may not terminate the lease for other good cause during the initial term unless the owner is terminating the tenancy because of something the family did or failed to do in accordance with 24 CFR 982.310(d)(2). The owner is expressly prohibited from terminating

the tenancy during the initial term of the lease based on the family's failure to accept the offer of a new lease or revision, or for a business or economic reason.

(ii) If, after the initial term, the owner chooses not to renew the lease or terminates the lease for other good cause (as defined in 24 CFR 982.310(d)) to end the tenant-based assisted tenancy, the family would be required to move with continued tenant-based assistance or relinquish the tenant-based voucher and enter into a new lease to receive PBV assistance in order to remain in the unit.

(4) Admission of in-place families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i).

(c) *Selection from waiting list.* (1) Applicants who will occupy PBV units must be selected from the waiting list for the PBV program.

(2) The PHA must identify in the Administrative Plan which of the following options it will use to structure the waiting list for the PBV program:

(i) The PHA may use a separate, central, waiting list comprised of more than one, or all, PBV projects;

(ii) The PHA may use the same waiting list for both tenant-based assistance and some or all PBV projects; or

(iii) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units). This option may be used in combination with the option in paragraph (c)(2)(i) or (ii) of this section. The PHA must specify the name of the PBV project in the Administrative Plan. The PHA may permit the owner to maintain such waiting lists (see paragraph (c)(7) of this section for more information).

(3) For any of the options under paragraph (c)(2) of this section, the PHA may establish in its Administrative Plan any preferences for occupancy of particular units including the name of the project(s) and the specific preferences that are to be used by project. Criteria for occupancy of units (e.g., elderly families) may also be established; however, selection of families must be done through an admissions preference.

(4) The PHA may merge the waiting list for PBV assistance with the PHA's

waiting list for admission to another assisted housing program.

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

(6) If the PHA chooses to use a separate waiting list for admission to PBV units under paragraphs (c)(2)(i) and (iii) of this section, 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 (including owner-maintained PBV waiting lists).

(7) PHAs using separate waiting lists for individual projects or buildings, as described in paragraph (c)(2)(iii) of this section, may establish in their Administrative Plan that owners will maintain such waiting lists. PHAs may choose to use owner-maintained PBV waiting lists for specific owners or projects. PHAs may permit an owner to maintain a single waiting list across multiple projects owned by the owner. Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to, processing changes in applicant information, removing an applicant's name from the waiting list, opening and closing the waiting list. PHAs must identify in their Administrative Plans the name of the project(s), the oversight procedures the PHA will use to ensure owner-maintained waiting lists are administered properly and in accordance with program requirements, and the approval process of an owner's waiting list policy (including any preferences). Where a PHA allows for owner-maintained waiting lists, all the following apply:

(i) The owner must develop and submit a written owner waiting list policy to the PHA for approval. The owner waiting list policy must include policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list. The owner must receive approval from the PHA of its owner waiting list policy in accordance with the process established in the PHA's

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Administrative Plan. The owner's waiting list policy must be incorporated in the PHA's Administrative Plan.

(ii) The owner must receive approval from the PHA for any preferences that will be applicable to the project. The PHA will approve such preferences as part of its approval of the owner's waiting list policy. Each project may have a different set of preferences. Preferences must be consistent with the PHA Plan and listed in the owner's waiting list policy.

(iii) The owner is responsible for opening and closing the waiting list, including providing public notice when the owner opens the waiting list in accordance with 24 CFR 982.206. If the owner-maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 CFR 982.206 and the owner waiting list policy.

(iv) The applicant may apply directly at the project, or the applicant may request that the PHA refer the applicant to the owner for placement on the project's waiting list. The PHA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.

(v) Applicants already on the PHA's waiting list must be permitted to place their names on the project's waiting lists.

(vi) At the discretion of the PHA, the owner may make preliminary eligibility determinations for purposes of placing the family on the waiting list, and preference eligibility determinations. The PHA may choose to make this determination rather than delegating it to the owner.

(vii) If the PHA delegated the preliminary eligibility and preference determinations to the owner, the owner is responsible for notifying the family of the owner's determination not to place the applicant on the waiting list and a determination that the family is not eligible for a preference. In such a case, the owner is responsible to provide the notice at 24 CFR 982.554(a) of this title. The PHA is then responsible for conducting the informal review.

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(viii) Once an owner selects the family from the waiting list, the owner refers the family to the PHA who then determines the family's final program eligibility. The owner may not offer a unit to the family until the PHA determines that the family is eligible for the program.

(ix) All HCV waiting list administration requirements that apply to the PBV program (24 CFR part 982, subpart E, other than 24 CFR 982.201(e), 982.202(b)(2), and 982.204(d)) apply to owner-maintained waiting lists.

(x) The PHA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements under the authorities cited at 24 CFR 5.105(a). The owner is responsible for maintaining complete and accurate records as described in 24 CFR 982.158. The owner must give the PHA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management, as described in 24 CFR 982.158(c). HUD may undertake investigation to determine whether the PHA or owner is in violation of authorities and, if unable to reach a voluntary resolution to correct the violation, take an enforcement action against either the owner or the PHA, or both.

(8) 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 (including owner-maintained PBV waiting lists) for such programs.

(9) Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features (see 24 CFR 8.26, 8.27, and 100.202). Also see § 983.260. The PHA shall have some mechanism for referring to accessible PBV units a family

that includes a person with a mobility or sensory impairment.

(d) *Preference for services offered.* In selecting families, PHAs (or owners in the case of owner-maintained waiting lists) may give preference to families who qualify for voluntary services, including disability-specific services, offered at a particular project, consistent with the PHA Plan and Administrative Plan.

(1) The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

(2) Families must not be required to accept the particular services offered at the project nor shall families be required to provide their own equivalent services if they decline the project's services.

(3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units.

(e) *Offer of PBV assistance or owner's rejection.* (1) If a family refuses the PHA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the PHA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by the PHA.

(2) The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

(i) If a central PBV waiting list is used, the PHA's Administrative Plan must address the number of offers a family may reject without good cause before the family is removed from the PBV waiting list and whether the owner's rejection will impact the family's place on the PBV waiting list.

(ii) If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-

specific PBV waiting list is not affected.

(iii) The PHA must define "good cause" for purposes of paragraphs (e)(2)(i) and (ii) of this section in its Administrative Plan. The PHA's definition of good cause must include, at minimum, that:

(A) The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;

(B) The unit has HQS deficiencies;

(C) The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and

(D) The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in part 5, subpart L of this title.

(3) None of the following actions may be taken against an applicant solely because the applicant 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 or any other available PBV waiting list. However, the PHA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.

(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 from the waiting list.

(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; 89 FR 38331, May 7, 2024]

#### § 983.252 PHA information for accepted family.

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the

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PHA must give the family an oral briefing.

(1) The briefing must include information on the following subjects:

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Family right to move.

(2) The PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process.

(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) Information on Federal, State, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;

(4) PHA subsidy standards, including when the PHA will consider granting exceptions to the standards as allowed by 24 CFR 982.402(b)(8), and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and

(5) Family right to move.

(c) *Statement of family responsibility.* The PHA and family must sign the statement of family responsibility.

(d) *Providing information for persons with limited English proficiency.* The PHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with obligations and procedures contained in Title VI of the Civil Rights Act of 1964, and HUD's implementing regulation at 24 CFR part 1, Executive Order 13166, and HUD's *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Per-*

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(72 FR 2732) or successor authority.

[70 FR 59913, Oct. 13, 2005, as amended at 89 FR 38333, May 7, 2024]

### § 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 from the waiting list for the PBV program in accordance with § 983.251 of this part.

(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. The owner must provide a copy of such rejection notice to the PHA.

(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; 89 FR 38334, May 7, 2024]

### § 983.254 Vacancies.

(a) *Filling vacant units.* (1) The PHA and the owner must make reasonable good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy in accordance with § 983.157(e)(5) are not subject to this requirement.

(i) If an owner-maintained waiting list is used, in accordance with § 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit and refer the

family to the PHA for final eligibility determination. The PHA must make every reasonable effort to make such final eligibility determination within 30 calendar days.

(ii) If a PHA-maintained waiting list is used, in accordance with § 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit, and the PHA must, after receiving the owner notice, make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days.

(2) The owner must lease vacant contract units only to families determined eligible by the PHA.

(b) *Reducing number of contract units.* If any contract units have been vacant for a period of 120 days or more since owner notice of vacancy, as required in paragraph (a) of this section, and notwithstanding the reasonable good-faith efforts of the PHA and the owner 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.

[89 FR 38334, May 7, 2024]

#### § 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 tenant 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 be stated in the Administrative Plan and 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; 89 FR 38334, May 7, 2024]

#### § 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

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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 allo-

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cation 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.**

24 CFR 982.310 of this title applies with the exception that 24 CFR 982.310(d)(1)(iii) and (iv) does 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.) In addition, the owner may terminate the tenancy in accordance with the requirements related to lease terminations for development activity on units under a HAP contract as provided in § 983.157(g)(6)(iii) and for substantial improvement to units under a HAP contract as provided in § 983.212(a)(3)(iii). 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

[89 FR 38334, May 7, 2024]

**§ 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) *Security deposit permitted.* The owner may collect a security deposit from the tenant.

(b) *Amount of security deposit.* The PHA must prohibit the owner from charging assisted tenants security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) *Use of security deposit.* 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) *Security deposit reimbursement to owner.* 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) *Insufficiency of security deposit.* 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; 89 FR 38334, May 7, 2024]

**§ 983.260 Overcrowded, under-occupied, and accessible units.**

(a) *Family occupancy of wrong-size or accessible unit.* (1) The PHA subsidy standards determine the appropriate unit size for the family size and composition.

(2) If the PHA determines that a family is occupying a wrong-size unit, or a unit with accessibility features that the family does not require and the unit is needed by a family that requires the accessibility features (see 24 CFR 8.27), the PHA must:

(i) Within 30 days from the PHA's determination, notify the family and the owner of this determination; and

(ii) Within 60 days from the PHA's determination, offer the family continued housing assistance, pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.*

(1) The PHA policy on continued housing assistance must be stated in the Administrative Plan and may be in the form of:

(i) PBV 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 tenant-based rental assistance.

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(2) If no continued housing assistance as described in paragraph (b)(1) of this section is available, the PHA must remove the wrong-size or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher. Section 983.206(b) does not apply to families issued a tenant-based voucher under the circumstance described in this paragraph (b)(2).

(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:

(i) 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.

(ii) 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 another form of continued housing assistance (other than tenant-based rental assistance under the voucher program), in accordance with paragraph (b)(1) of this section, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

(i) In the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate-size unit, the family does not accept the offer and does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days. The family may request and the PHA may grant one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

(ii) In the case of an offer by the PHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

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mined by the PHA, not to exceed 90 days.

(iii) In the case of an offer by the PHA of other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the PHA, not to exceed 90 days. The family may request and the PHA may grant one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate, affordable, safe, and geographically proximate replacement housing.

(d) *Reinstatement.* The PHA may reinstate a unit removed under paragraph (b)(2), (c)(1)(ii), or (c)(2) of this section to the HAP contract after the family vacates the property, in accordance with § 983.207(b).

[89 FR 38334, May 7, 2024]

## § 983.261 Family right to move.

(a) *Termination of assisted lease after one year.* The family may terminate the assisted lease at any time after one year of PBV assistance. 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) *Continued assistance.* If the family has elected to terminate the lease in accordance with paragraph (a) of this section, the PHA must offer the family the opportunity for continued tenant-based rental assistance. The PHA must specify in the Administrative Plan whether it will offer families assistance under the voucher program or other comparable tenant-based rental assistance. If voucher assistance is offered to the family and the search term expires, the PHA must issue the voucher to the next eligible family.

(c) *Contacting the PHA.* Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact the PHA to request a voucher or 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 to the family upon the family's request to the PHA, the PHA must give the family priority

to receive the next available opportunity for continued tenant-based rental assistance. The PHA must describe in its Administrative Plan its policies and procedures for how the family must contact the PHA and how the PHA documents families waiting for continued tenant-based rental assistance.

(d) *Termination of assisted lease before one year.* If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance under this section.

(e) *Notice exclusion.* 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, the family is not required to give the owner advance written notice or contact the PHA under paragraph (a) and (c), respectively, of this section before moving from the unit. Additionally, when 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, the family is not required to give the owner advance written notice or contact the PHA under paragraph (a) and (c), respectively, of this section before moving from the unit. A PHA may not terminate the assistance of a family due to a move occurring under the circumstances in this paragraph (e) and must offer the family the opportunity for continued tenant-based assistance if the family had received at least one year of PBV assistance prior to moving.

(f) *Emergency Transfer Plans.* In the case of a move due to domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, PHAs must describe policies for facilitating emergency transfers for families with PBV assistance in their Emergency Transfer Plan, consistent with the requirements in 24 CFR 5.2005(e), including when the victim has received PBV assistance for less than one year and is not eligible for continued assistance under § 983.261(b).

(g) *Family break-up.* If a family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), the PHA must ensure that the victim retains assistance in accordance with 24 CFR 982.315(a)(2).

[89 FR 38335, May 7, 2024]

**§ 983.262 Occupancy of units under the increased program cap and project cap excepted units.**

(a) *General.* Pursuant to § 983.6(a), a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units at the time of commitment. There are certain units eligible for an increased program cap as described in § 983.6(d). Pursuant to § 983.54(a), the PHA may not select a proposal to provide PBV assistance or place units under an Agreement or a HAP contract in excess of the project cap. There are certain exceptions to the project cap as described in § 983.54(c). This section provides more detail on the occupancy requirements of both the excepted units from the project cap under § 983.54(c)(2) and units under the increased program cap under § 983.6(d).

(b) *Requirements applicable to both excepted units and units under an increased program cap.* (1) The unit must be occupied by a family who meets the applicable exception.

(2) The family must be selected from the waiting list for the PBV program through an admissions preference (see § 983.251).

(3) Once the family vacates the unit, the unit must be made available to and occupied by a family that meets the applicable exception.

(4) The PHA must specify in its Administrative Plan which of the options below the PHA will take if a unit is no longer qualified for its excepted status or the increased program cap:

(i) Substitute the unit for another unit if it is possible to do so in accordance with § 983.207(a), so that the overall number of excepted units or units under the increased program cap in the project is not reduced. A PHA may, in conjunction with such substitution,

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add the original unit to the HAP contract if it is possible to do so in accordance with § 983.207(b), including that such addition does not cause the PHA to exceed the program cap or become non-compliant with the project cap.

(ii) Remove the unit from the PBV HAP contract. In conjunction with the removal, the PHA may provide the family with tenant-based assistance, if the family is eligible for tenant-based assistance. The family and the owner may agree to use the tenant-based voucher in the unit; otherwise, the family must move from the unit with the tenant-based voucher. If the family later vacates the unit, the PHA may add the unit to the PBV HAP contract in accordance with § 983.207.

(iii) Change the unit's status under the project cap or program cap, as applicable, provided that the change does not cause the PHA to exceed the program cap or become non-compliant with the project cap.

(c) *Requirements for units under the increased program cap—(1) Homeless family.* A unit qualifies under the increased program cap at § 983.6(d)(1)(i) if the family meets the definition of homeless under Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), included in 24 CFR 578.3, at the time the family first occupies the unit.

(2) *Veteran family.* A unit qualifies under the increased program cap at § 983.6(d)(1)(ii) if the family is comprised of or includes a veteran (a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom) at the time the family first occupies the unit.

(3) *Supportive housing for persons with disabilities or elderly persons.* The following applies to the increased program cap category at § 983.6(d)(1)(iii):

(i) A disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit. The member of the family may choose not to participate in the services.

(ii) The PHA must state in its Administrative Plan whether it will allow a family that initially qualified for supportive housing for persons with disabilities or elderly persons to con-

tinue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or family member with a disability or long term or permanent hospitalization or nursing care), the elderly family member or family member with a disability no longer resides in the unit. In this case, the unit may continue to count under the increased program cap category for as long as the family resides in that unit. However, the requirements of § 983.260, concerning wrong-sized units, apply. If the PHA chooses not to exercise this discretion, the unit no longer counts under the increased program cap category and, if the family is not required to move from the unit as a result of § 983.260, the PHA may use one of the options described in paragraph (b)(4) of this section.

(4) *Units for Family Unification Program (FUP) youth.* See paragraph (e) of this section for requirements relating to the increased program cap category at § 983.6(d)(2).

(d) *Requirements for project cap excepted units—(1) Elderly family.* A unit under the project cap exception category at § 983.54(c)(2)(i) must be occupied by an elderly family, as defined in 24 CFR 5.403. The PHA must state in its Administrative Plan whether it will allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. However, the requirements of § 983.260, concerning wrong-sized units, apply. If the PHA chooses not to exercise this discretion, the unit is no longer considered excepted and, if the family is not required to move from the unit as a result of § 983.260, the PHA may use one of the options described in paragraph (b)(4) of this section.

(2) *Disabled family.* The same provisions of paragraph (d)(1) of this section apply to units previously excepted

based on disabled family status under a HAP contract in effect prior to April 18, 2017.

(3) *Supportive services.* The following applies under the project cap exception category at § 983.54(c)(2)(iii):

(i) A unit is excepted if any member of the family is eligible for one or more of the supportive services even if the family chooses not to participate in the services.

(ii) If any member of the family chooses to participate and successfully completes the supportive services, the unit continues to be excepted for as long as any member of the family resides in the unit, even if the members that continue to reside in the unit are ineligible during tenancy for all available supportive services.

(iii) The unit loses its excepted status only if the entire family becomes ineligible during the tenancy for all supportive services available to the family. This provision does not apply where any member of the family has successfully completed the supportive services under paragraph (c)(2) of this section.

(iv) A family cannot be terminated from the program or evicted from the unit because they become ineligible for all supportive services during the tenancy.

(4) *Units for FUP youth.* See paragraph (e) of this section for requirements relating to the increased project cap exception category at § 983.54(c)(2)(ii).

(e) *Requirements for units for FUP youth under the increased program cap and project cap exception.* The following applies under the project cap exception category at § 983.54(c)(2)(ii) and the increased program cap category at § 983.6(d)(2):

(1) A unit is excepted from the project cap or qualifies under the increased program cap, as applicable, if the unit is occupied by an eligible youth receiving FUP assistance.

(2) The youth must vacate the unit once the FUP assistance has expired. The unit loses its excepted status or no longer qualifies under the increased program cap, as applicable, if the youth does not move from the unit

upon the expiration of the FUP assistance.

[89 FR 38335, May 7, 2024]

## 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 in accordance with the Administrative Plan not to exceed 110 percent of the applicable fair market rent (or the amount of any applicable exception payment standard) 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.

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(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) An amount determined by the PHA in accordance with the Administrative Plan, not to exceed 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) When determining the initial rent to owner, the PHA shall use the most recently published FMR

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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.

(2) 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.

(3)(i) For PBV projects that are not located in a designated SAFMR area under 24 CFR 888.113(c)(1), or for PBV projects not located in a ZIP code where the PHA has opted in under 24 CFR 888.113(c)(3), any exception payment standard amount approved under 24 CFR 982.503(d)(2)-(4) applies for purposes of paragraphs (b)(1) and (c)(1)(iv) of this section. HUD will not approve a different payment standard amount for use in the PBV program.

(ii) For PBV projects that are located in a designated SAFMR area under 24 CFR 888.113(c)(1), or for PBV projects located in a ZIP code where the PHA has opted in under 24 CFR 888.113(c)(3), an exception payment standard amount approved under 24 CFR 982.503(d)(3)-(4) will apply for purposes of paragraphs (b)(1) and (c)(1)(iv) of this section only if the PHA has adopted a policy applying SAFMRs to its PBV program and met all other requirements in accordance with 24 CFR 888.113(h).

(4) HUD may establish a process allowing PHAs to adopt project-specific utility allowances by notification in the FEDERAL REGISTER subject to public comment. Absent the establishment of such a project-specific utility allowance, the PHA's utility allowance schedule as determined under 24 CFR 982.517(b)(2)(i) or (ii) applies to both the tenant-based and PBV programs.

(5) The PHA must continue to use the applicable utility allowance schedule for the purpose of determining the initial rent to owner and redetermining the rent to owner for contract units, as outlined in this 24 CFR 983.301, regardless of whether the PHA approves a

higher utility allowance as a reasonable accommodation for a person with disabilities living in a contract unit (see 24 CFR 982.517(e)).

(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 must be determined by the independent entity approved by HUD in accordance with § 983.57. 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; 89 FR 38336, May 7, 2024]

**§ 983.302 Redetermination of rent to owner.**

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

(1) When there is a 10 percent decrease in the published FMR;

(2) Upon the owner's request consistent with requirements established in the PHA's Administrative Plan. The Administrative Plan must specify any advance notice the owner must give the PHA and the form the request must take; or

(3) At the time of the automatic adjustment by an operating cost adjustment factor (OCAF) in accordance with paragraph (b)(3).

(b) *Rent increase.* (1) An owner may receive an increase in the rent to owner during the term of a HAP contract. Any such increase will go into effect at the annual anniversary of the HAP contract. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(c)(2)(B) do not apply to the voucher program.)

(2) A rent increase may occur through automatic adjustment by an operating cost adjustment factor (OCAF) or as the result of an owner request for such an increase. A rent increase as the result of an owner request must be determined by the PHA pursuant to § 983.301(b) or (c), as applicable. A rent increase through an adjustment by an OCAF is likewise subject to § 983.301(b) or (c), as applicable, except there is no rent request by the owner to take into account since the PHA redetermines the rent automatically under that option.

(3) By agreement of the parties, the HAP contract may provide for rent adjustments using an operating cost adjustment factor (OCAF) established by the Secretary pursuant to Section 524(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 at each annual anniversary of the HAP contract. OCAFs are established by the Secretary and published annually in the *FEDERAL REGISTER*. The provisions in the following paragraphs apply to a contract that provides for rent adjustments using an OCAF:

(i) The contract may require an additional increase up to an amount determined by the PHA pursuant to § 983.301(b) or (c), as applicable, if requested by the owner in writing, periodically during the term of the contract.

(ii) The contract shall require an additional increase up to an amount determined by the PHA pursuant to § 983.301(b) or (c), as applicable, at the point of contract extension, if requested by the owner in writing.

(4) If the HAP contract does not provide for automatic adjustment by an OCAF, then an owner who wishes to receive an increase in the rent to owner must request such an increase at the annual anniversary of the HAP contract by written notice to the PHA.

(5) The PHA must establish the length of the required notice period for any rent increase that requires a written request from the owner. The written request must be submitted as required by the PHA (e.g., to a particular mailing address or email address).

(6) 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 (except that HQS compliance is not required for purposes of this provision for units undergoing development activity that complies with § 983.157 or substantial improvement that complies with § 983.212). The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* (1) If the HAP contract provides for rent adjustments by an OCAF and there is a decrease in the

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fair market rent, tax credit rent, or reasonable rent that requires a decrease to the rent to owner (see paragraph (b)(2)), the rent to owner must be decreased. If the HAP contract does not provide for adjustment by an OCAF and 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 requests a rent adjustment.

(2) At any time during the term of the HAP contract, the PHA may elect within the HAP contract to not reduce rents below the initial rent to owner. Where a PHA makes such an election, the rent to owner shall not be reduced below the initial rent to owner, 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 §983.153(b); 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 change in rent to owner.* Whenever there is a change in rent to owner, the PHA must provide written notice to the owner specifying the amount of the new rent to owner (as determined in accordance with §§983.301 and 983.302). The PHA notice of the rent change in rent to owner 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.

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(3) The annual anniversary of the HAP contract for contract units completed in stages must follow §983.207(g).

[89 FR 38337, May 7, 2024]

#### § 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(c)(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 add a contract unit or substitute a different contract unit in the same building or project;

(4) Whenever the PHA accepts a completed unit after development activity that is conducted after HAP contract execution (see §983.156(b)(3)); and

(5) 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.

(3) The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

(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 entity in accordance with § 983.57, 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.

[70 FR 59913, Oct. 13, 2005, as amended at 79 FR 36170, June 25, 2014; 81 FR 80583, Nov. 16, 2016; 89 FR 38338, May 7, 2024]

#### § 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 ex-

ceed 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. The PHA must include in its Administrative Plan the PHA's policy on the conditions under which it will allow vacancy payments in a HAP contract, the duration of the payments, amount of vacancy payments it will make to an owner, and the required form and manner of requests for vacancy payments, in accordance with paragraph (b)(4) of this section.

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 89 FR 38338, May 7, 2024]

#### **§ 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 non-payment of the PHA housing assistance payment.

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

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant

rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

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

(2) The PHA must describe in its Administrative Plan its policies on paying the utility reimbursement directly to the family or directly to the utility supplier.

(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.

[70 FR 59913, Oct. 13, 2005, as amended at 89 FR 38338, May 7, 2024]

#### **§ 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.