

## Chapter 22

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and HACSM policies related to the project-based voucher (PBV) program and its administration. The PBV program attaches rental assistance to a particular unit rather than to a family (as with tenant-based rental assistance).

#### I. GENERAL REQUIREMENTS [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. HACSM may only operate a PBV program if doing so is consistent with its Annual Plan and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

HACSM will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, HACSM is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, HACSM is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

#### Tenant-Based vs. Project-Based Voucher Assistance [24 CFR 983.2]

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

#### Relocation Requirements [24 CFR 983.7]

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

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. HACSM may not use voucher program funds to cover relocation costs, except that HACSM may use their

administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

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

### **Equal Opportunity Requirements [24 CFR 983.8]**

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

## **II. PBV OWNER PROPOSALS**

This section describes the procedures for owner submission of PBV proposals and for selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, HACSM will determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per building [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57].

### **Owner Proposal Selection Procedures [24 CFR 983.51]**

HACSM will select PBV proposals by either of the following two methods.

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

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

HACSM procedures for selecting PBV proposals will be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by HACSM. 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 HACSM request for PBV proposals will specify the submission deadline. Detailed application and selection information will be provided at the request of interested parties.

### HACSM Request for Proposals for Rehabilitated and Newly Constructed Units

- HACSM will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in local newspapers of general circulation and the HACSM web site.
- HACSM will publish its advertisement in local newspapers and the HACSM web site for at least one day per week for two consecutive weeks. The advertisement will specify the number of units HACSM estimates that it will be able to assist under the funding HACSM is making available. Proposals will be due in the HACSM office by close of business 30 calendar days from the date of the last publication.
- In order for the proposal to be considered, the owner must submit the proposal to HACSM by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals and late proposals will not be reviewed.
- HACSM will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:
  - Term of contract requested. A long term commitment (subject to the regulatory cap) will be ranked higher than shorter term commitment;
  - Owner experience and capability to build or rehabilitate housing as identified in the RFP;
  - Extent to which the project furthers HACSM's goal of deconcentrating poverty and expanding housing and economic opportunities;
  - If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property;
  - New constructions that will be restricted to low or very-low income occupancy;
  - Projects that are situated along public transportation corridors;
  - Projects that are owned or developed by non-profit organizations that have a solid record of effective property management;
  - Projects that have completed feasibility/readiness reviews to commence construction.

### HACSM Requests for Proposals for Existing Housing Units

- HACSM will advertise its request for proposals (RFP) for existing housing in local newspapers of general circulation and the HACSM web site.
- HACSM will periodically publish its advertisement in local newspapers and the HACSM web site at least one day per week for two consecutive weeks. The advertisement will specify the number of units HACSM estimates that it will be able to assist under the funding it is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:
  - Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
  - Extent to which the project furthers HACSM's goal of deconcentrating poverty and expanding housing and economic opportunities;
  - If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
  - Extent to which units are occupied by families that are eligible to participate in the PBV program.

### HACSM Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

- HACSM will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits (LIHTC) on an ongoing basis.
  - HACSM may periodically advertise that it is accepting proposals, in local newspapers of general circulation and the HACSM web site.
- In addition to, or in place of advertising, HACSM may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.
- Proposals will be reviewed on a first-come first-served basis. HACSM will evaluate each proposal on its merits using the following factors:
  - Extent to which the project furthers HACSM's goal of deconcentrating poverty and expanding housing and economic opportunities; and
  - Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

### **HACSM-Owned Units [24 CFR 983.51(e) and 983.59]**

HACSM-owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and

determines that HACSM-owned units were appropriately selected based on the selection procedures specified in the HACSM administrative plan. If HACSM selects a proposal for housing that is owned or controlled by HACSM, it must identify the entity that will review the HACSM proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of HACSM-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

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

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

#### **HACSM Notice of Owner Selection [24 CFR 983.51(d)]**

HACSM will give prompt written notice to the party that submitted a selected proposal and HACSM will notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

HACSM will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers it used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. HACSM will also post the notice of owner selection on its web site.

HACSM will make available to any interested party its rating and ranking sheets and documents that identify HACSM's basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. HACSM will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

HACSM will make these documents available for review at its office during normal business hours. There will be a nominal charge per page for the cost of reproduction of allowable documents.

#### **Housing Type [24 CFR 983.52]**

HACSM may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HACSM selection, the units

substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

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

## **Prohibition of Assistance For Certain Units**

### ***Ineligible Housing Types [24 CFR 983.53]***

HACSM cannot attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; cooperative housing; and transitional housing. In addition, HACSM will not attach or pay PBV assistance for a unit occupied by an owner and HACSM will not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

### ***High-rise Elevator Projects for Families with Children [24 CFR 983.53(b)]***

HACSM may use high-rise elevator buildings for families with children if it makes a determination that there is no practical alternative and HUD approves the HACSM determination. HACSM may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis.

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

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

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (unless it's a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;

- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or HACSM in accordance with HUD requirements.

### **Subsidy Layering Requirements [24 CFR 983.55]**

HACSM may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance 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.

HACSM will submit the necessary documentation to HUD for a subsidy layering review. HACSM may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

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.

### **Cap on Number of PBV Units in Each Building**

#### ***25 Percent per Building Cap [24 CFR 983.56(a)]***

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

#### ***Exceptions to 25 Percent per Building Cap [24 CFR 983.56(b)]***

Exceptions are allowed and PBV units are not counted against the 25 percent per building cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

HACSM will include in its administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. HACSM may not require participation in medical

or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. The lease must contain the family's obligation to participate in the designated service program. Failure of the family to comply is good cause to terminate the family from the program

The types of supportive services offered to families for a project to qualify for the exception are those intended to promote self-sufficiency, including:

- Outreach
- Case management, counseling
- Health care, psychiatric and mental health care, substance abuse treatment
- Life skills, parenting skills
- Child care, transportation, housing search assistance, budgeting
- Employment assistance, job training/placement
- Education, vocational opportunities

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

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

### ***Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]***

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

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

### **Site Selection Standards**

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

HACSM will not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless HACSM has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and



expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and administrative plan.

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

It is the HACSM goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. To achieve this goal, HACSM will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

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

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

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

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

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

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

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless HACSM determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of

minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;

- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **Environmental Review [24 CFR 983.58]**

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

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

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

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

### **III. DWELLING UNITS**

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

#### **Housing Quality Standards [24 CFR 983.101]**

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

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

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

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

#### **Housing Accessibility for Persons With Disabilities**

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

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

#### **Inspecting Units**

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

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

##### ***Pre-HAP Contract Inspections [24 CFR 983.103(b)]***

HACSM will inspect each contract unit before execution of the HAP contract. HACSM may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### ***Turnover Inspections [24 CFR 983.103(c)]***

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

### ***Annual Inspections [24 CFR 983.103(d)]***

At least annually during the term of the HAP contract, HACSM will inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, HACSM will reinspect 100 percent of the contract units in the building.

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

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

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

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

### ***Inspecting HACSM-owned Units [24 CFR 983.103(f)]***

HACSM received authorization through its FY2009 MTW Annual Plan that it may inspect HACSM-owned units. HACSM will take prompt corrective actions to address any HQS findings.

## **IV. REHABILITATED AND NEWLY CONSTRUCTED UNITS [24 CFR 983.151]**

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

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

### **Agreement to Enter Into HAP (AHAP) Contract**

In order to offer PBV assistance in rehabilitated or newly constructed units, HACSM will enter into an agreement to enter into a HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

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

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

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

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

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

The Agreement will be executed promptly after HACSM notice of proposal selection to the selected owner. However, HACSM may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, HACSM may not enter into the Agreement until the environmental review is completed and HACSM has received environmental approval.

### **Conduct of Development Work**

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

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

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5,

and other applicable federal labor relations laws and regulations. HACSM will monitor compliance with labor standards.

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

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

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

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

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

**Completion of Housing**

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

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

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

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

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

***HACSM Acceptance of Completed Units [24 CFR 983.156]***

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

If the work has not been completed in accordance with the Agreement, HACSM will not enter into the HAP contract.

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

## **V. HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

HACSM will enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

### **HAP Contract Requirements**

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

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any building that will exceed the 25 percent per building cap, which will be set-aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

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

HACSM will not enter into a HAP contract until each contract unit has been inspected and it has determined that the unit complies with the Housing Quality Standards (HQS).

For existing housing, the HAP contract will be executed promptly after HACSM selects the owner proposal, inspects the housing units, and determines that all units pass HQS.

For newly constructed or rehabilitated housing, the HAP contract will be executed after HACSM has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

### ***Term of HAP Contract [24 CFR 983.205]***

HACSM will enter into a HAP contract with an owner for an initial term of no less than one year and no more than ten years. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

Within one year before expiration of the HAP contract, HACSM may extend the term of the contract for an additional term of up to five years if HACSM determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

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

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

### ***Termination by HACSM [24 CFR 983.205(c)]***

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

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

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

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

### ***Remedies for HQS Violations [24 CFR 983.207(b)]***

HACSM will not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If HACSM determines that a contract does not comply with HQS, it will exercise any of its remedies under the HAP



contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

### **Amendments to the HAP Contract**

#### ***Substitution of Contract Units [24 CFR 983.206(a)]***

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

#### ***Addition of Contract Units [24 CFR 983.206(b)]***

At the HACSM's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of the HACSM's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

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

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

#### **HAP Contract Year, Anniversary and Expiration Dates [24 CFR 983.206(c) and 983.302(e)]**

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

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

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

#### **Owner Responsibilities under the HAP [24 CFR 983.209]**

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

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred HACSM, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

### **Additional HAP Requirements**

#### ***Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]***

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

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

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

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

At the discretion of HACSM, the HAP contract may provide for vacancy payments to the owner for a HACSM-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 amount of the vacancy payment will be

determined by HACSM 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).

HACSM will decide on a case-by-case basis if it will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

## **VI. SELECTION OF PBV PROGRAM PARTICIPANTS**

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

### **Eligibility for PBV Assistance [24 CFR 983.251(a) and (b)]**

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

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and HACSM, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to HACSM's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

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

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

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by HACSM is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family will be placed on HACSM's waiting list.

Once the family's continued eligibility is determined (HACSM may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family will be given an absolute selection preference and HACSM must refer these families to the

project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

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

### **Organization of the Waiting List [24 CFR 983.251(c)]**

HACSM will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

### **Selection from the Waiting List [24 CFR 983.251(c)]**

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

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

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

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

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

### ***Preferences [24 CFR 983.251(d)]***

HACSM may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. HACSM must provide an absolute selection preference for eligible in-place families as described above (see In-Place Families).

Although HACSM is prohibited from granting preferences to persons with a specific disability, HACSM may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

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

projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If HACSM has buildings with more than 25 percent of the units receiving project-based assistance because those buildings include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), HACSM must give preference to such families when referring families to these units [24 CFR 983.261(b)].

HACSM will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units).

HACSM will provide a selection preference when the available supportive services most match the family’s needs.

### **Offer of PBV Assistance**

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

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

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

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

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

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

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

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

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

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

### *Persons with Limited English Proficiency*

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

### **Owner Selection of Tenants**

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

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

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

### ***Filling Vacancies [24 CFR 983.254(a)]***

The owner must promptly notify HACSM of any vacancy or expected vacancy in a contract unit. After receiving such notice, HACSM will make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. HACSM and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

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

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, HACSM may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

If HACSM gives notice to the owner amending the HAP contract, HACSM will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of HACSM's notice.

### **Tenant Screening [24 CFR 983.255]**

#### ***HACSM Responsibility***

HACSM is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy.

HACSM will not conduct screening to determine a PBV applicant family's suitability for tenancy unless the PBV unit is HACSM-owned.

HACSM will provide the owner with an applicant family's current and prior address (as shown in HACSM records) and the name and address (if known by HACSM) of the family's current landlord and any prior landlords. In addition, HACSM may offer the

owner other information it may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HACSM will provide applicant families a description of its policy on providing information to owners, and HACSM will give the same types of information to all owners.

HACSM will make an exception to the above requirement if the family's whereabouts must be protected due to domestic abuse or witness protection.

### ***Owner Responsibility***

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

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

## **VII. OCCUPANCY**

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

### **Lease**

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

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

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

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

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

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

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

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

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by HACSM (the names of family members and any HACSM-approved live-in aide);

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

***Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]***

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, HACSM will provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

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

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

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

***Owner Termination of Tenancy [24 CFR 983.257]***

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

***Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c)]***

If a family is living in a project-based unit that is excepted from the 25 percent per building cap on project-basing because of participation in a supportive services program



(e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

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

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by HACSM policy. According to HACSM program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

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

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

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

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

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

## **Moves**

### ***Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]***

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

HACSM will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If HACSM offers the family a tenant-based voucher, it will terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by HACSM).

If HACSM offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit

within a reasonable time as determined by HACSM, or both, HACSM will terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by HACSM.

When HACSM offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, HACSM will terminate the housing assistance payments at the expiration of this 30-day period.

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

### ***Family Right to Move [24 CFR 983.260]***

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

If the family terminates the lease in accordance with these requirements, HACSM is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, HACSM will give the family priority to receive the next available opportunity for continued tenant-based assistance.

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

### **Exceptions to the Occupancy Cap [24 CFR 983.261]**

HACSM may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a building unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by HACSM. At least one member must be receiving at least one qualifying supportive service.

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

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per building cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by HACSM, and HACSM will cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements will be terminated by HACSM.

## **VIII. DETERMINING RENT TO OWNER**

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

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

### **Rent Limits [24 CFR 983.301]**

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

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

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

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

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;

- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds a HACSM-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

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

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

### **Definitions**

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

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

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

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

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

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

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

HACSM will redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

### ***Rent Increase***

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

An owner's request for a rent increase must be submitted to HACSM 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

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

### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner will be decreased regardless of whether the owner requested a rent adjustment.

### ***Notice of Rent Change***

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

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

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

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

### ***Reasonable Rent [24 CFR 983.303]***

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by HACSM.

### ***When Rent Reasonable Determinations are Required***

HACSM will redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

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

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

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

### ***Comparability Analysis***

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

### ***HACSM-owned Units***

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

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

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

## **Effect of Other Subsidy and Rent Control**

In addition to the rent limits discussed in previous sections above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance.

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

At its discretion, HACSM may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

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

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

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### ***Combining Subsidy***

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

### ***Rent Control [24 CFR 983.305]***

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

## **IX. PAYMENTS TO OWNER**

### **Housing Assistance Payments [24 CFR 983.351]**

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

Except for discretionary vacancy payments, HACSM 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).

HACSM received approval through its FY2009 MTW Annual Plan to institute an alternate subsidy calculation method. The amount of the housing assistance payment

by HACSM is the rent to owner minus the subsidy amount as determined by HACSM's tiered subsidy table.

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

### **Vacancy Payments [24 CFR 983.352]**

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

If HACSM determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, HACSM will notify the landlord of the amount of housing assistance payment that the owner must repay. HACSM will require the owner to repay the amount owed in accordance with the policies in Chapter 19.

At the discretion of HACSM, the HAP contract may provide for vacancy payments to the owner. HACSM may only make vacancy payments if:

- The owner gives HACSM prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

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

### **Tenant Rent to Owner [24 CFR 983.353]**

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

The family is responsible for paying the tenant rent. HACSM received approval through its FY2009 MTW Annual Plan to institute an alternate subsidy calculation method. The amount of the housing assistance payment by HACSM is the rent to owner minus the subsidy amount as determined by the HACSM tiered subsidy table. The tenant rent is the rent to owner minus the HACSM subsidy. The minimum tenant rent is \$50.00.



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

### ***Tenant and HACSM Responsibilities***

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

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

### ***Utility Reimbursements***

HACSM will not make utility reimbursements to the family.

### **Other Fees and Charges [24 CFR 983.354]**

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

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

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

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

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