

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 983

[Docket No. FR-4636-F-02]

RIN 2577-AC25

Project-Based Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule replaces the current project-based certificate (PBC) regulations with a comprehensive new project-based voucher program. This rule is based on statutory authorities enacted in 1998 and 2000, and follows a proposed rule and public comment.

DATES: *Effective date:* November 14, 2005.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The project-based voucher law was initially enacted in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See section 545 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105-276) approved October 21, 1998) (QHWRA) amending 42 U.S.C. 1437f(o). Under QHWRA, a public housing agency (PHA), as defined under section 3(b)(6) of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(b)(6), has the option to use a portion of its available tenant-based voucher funds for project-based rental assistance. The project-based voucher law replaced an authority for project-based rental assistance in the former Section 8 certificate program.

In 2000, Congress substantially revised the project-based voucher law. (Section 8(o)(13) of the United States Housing Act of 1937, 42 U.S.C. 1473f(o)(13), as amended by section 232 of the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106-377, 114 S-tat. 1441, approved October 27, 2000)). The statutory basis for project-

based housing is codified at 42 U.S.C. 1437f(o)(13) under the heading, "PHA project-based assistance."

Significant changes made by QHWRA and the FY 2001 Appropriations Act include:

- A PHA may project-base up to 20 percent of the PHA's voucher funding.
- A PHA may provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing.
- Project-based assistance must be consistent with the "PHA Plan."
- Project-basing must be consistent with the statutory goals of "deconcentrating poverty and expanding housing and economic opportunities."
- After one year of assistance, a family may move from a project-based voucher unit. When a slot is available, the family may switch to the PHA's tenant-based voucher program or another comparable program.
- Except for units designated for families that are elderly, disabled, or receiving supportive services, no more than 25 percent of units in a building may have project-based voucher assistance.
- A PHA may enter into a housing assistance payments (HAP) contract for a term of up to 10 years. However, the PHA's contractual commitment is subject to availability of appropriated funds.
- At the end of the contract term, the PHA may extend the HAP contract with an owner for a period appropriate to achieve long-term affordability or to expand housing opportunities. Extensions are subject to availability of appropriated funds.
- Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) may not exceed the lower of the reasonable rent, or 110 percent of the applicable Fair Market Rent (FMR) (or any exception payment standard approved by the Secretary), or, if applicable, the tax credit rent. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.
- There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building located outside a "qualified census tract." These provisions are found at 42 U.S.C. 1437f(o)(13)(H).
- Admission to project-based units is subject to the overall voucher "income-targeting" requirement. Under 42 U.S.C. 1437f(o)(13)(J), the income targeting provisions of section 16(b) of the U.S. Housing Act of 1937 apply. Under these provisions, at least 75 percent of the

families admitted to the PHA tenant-based and project-based voucher programs each year must be families with annual incomes below 30 percent of median income for the area. HUD's regulations define such families as "extremely low-income families" at 24 CFR 5.603.

- All units must be inspected for housing quality standards (HQS) compliance before the PHA enters into a HAP contract with an owner. After the initial inspection, the PHA is not required to re-inspect each unit annually. Instead, the PHA may inspect a representative sample of units at the annual re-inspection.

- If a family moves out, the PHA may continue payments to the owner for up to 60 days. The PHA has discretion whether to provide such vacancy payments.

On January 16, 2001, (66 FR 3605), HUD published a **Federal Register** notice with guidance on the changes made to the project-based voucher (PBV) program in the FY 2001 Appropriations Act. By "project-based voucher program," this regulation means the program statutorily codified at 42 U.S.C. 1437f(o)(13), which allows PHAs to attach to dwelling units up to 20 percent of the funding available for tenant-based assistance. The HUD guidance notice described the law, identified statutory requirements that are effective immediately, and provided guidance on how to implement the law and existing program regulations.

II. The Proposed Rule

HUD published a proposed rule for comment on March 18, 2004 (69 FR 12950). A summary overview of the proposed rule can be found at 69 FR 12950-12953. The proposed rule text begins at 69 FR 12954. The comment period for this proposed rule closed on May 17, 2004. Forty-seven commenters submitted comments during the comment period on a wide variety of issues related to this proposed rule. The commenters included a variety of entities, including PHAs, professional and trade organizations, and individuals. In response to the comments, this final rule makes certain changes to the proposed rule as described in the following section of the preamble. In addition, a summary of the issues raised by the public commenters and HUD's responses is found at section IV of this preamble.

III. This Final Rule

This final rule implements the project-based voucher program. As of its effective date, this rule supersedes the January 2001 notice. The following

changes to the proposed rule are made by this final rule. Section IV of this preamble summarizes the public comments and HUD's responses to them.

Subpart A—General

1. Section 983.1

This final rule makes a technical correction in § 983.1(c), “Specific 24 CFR part 982 provisions that do not apply to PBV assistance.” References to § 982.551–982.555 are removed. It is not necessary to mention these sections as excepted from the sections that do not apply, because the same result is obtained by simply not mentioning them.

2. Section 983.3

In the PBV definitions under § 983.3(b), the definition of “baseline units” is deleted. Instead, the rule uses the concept of “budget authority” to indicate the amount of appropriated funds available to a PHA for its housing choice voucher program.

The definition of “HUD” is removed because it is unnecessary to restate it in this part. “HUD” is defined in 24 CFR 5.100.

The definition of PHA-owned unit is revised to clarify that “PHA owned” includes any interest by the PHA in the building in which a unit is located. This change is necessary because HUD's experience to date has been that the definition has been misunderstood and applied differently in different geographical areas. Also, in the proposed rule, this definition cross-referenced a non-applicable portion of part 982.

The definition of “proposal selection date” is revised to reference the PHA's administrative plan. Section 983.51(b) of this rule requires that the PHA's procedures for selecting proposals be stated in the administrative plan.

The definition of “rent to owner” is amended. Examples of non-housing services that are not included in rent are added, and the adjective “reasonable” is removed. The rent reasonableness test is an overall limitation on the amount of rent to owner under the rule, and it is not necessary to include it in the definition.

A number of terms defined in the proposed rule are removed because those terms are defined in 24 CFR part 982 and are applicable to this rule under § 983.3(a)(2)(ii). These terms are: Fair market rent (FMR); family; gross rent; group home; HAP contract; owner; participant; reasonable rent; tenant; and tenant rent.

Definitions were removed and replaced with cross references for

“utility allowance” and “utility reimbursement.” Both of these terms are defined at 24 CFR 5.603.

3. Section 983.5

The final rule makes two minor technical corrections. Section 983.5(a)(4) is amended to change “rental assistance payments” to “housing assistance payments.” Section 983.5(b)(2) is amended to change “project-basing” to “project-based vouchers” (a similar change is made in § 983.6(c)).

4. Section 983.6

In paragraphs (a) and (c) of this section dealing with the amount of project-based assistance available to a PHA, the phrase “baseline units” is removed. Instead, the amount of project-based funding is expressed as a percentage of the amount of budget authority allocated to the PHA.

5. Section 983.7

The Notice of Proposed Rulemaking (NPRM) proposed that voucher program funds could not be used to pay for relocation costs under the Uniform Relocation Act in connection with assistance under this part. This final rule allows administrative fee reserves to be used for this purpose provided that payment of relocation benefits is consistent with state and local law and HUD regulations on the use of reserves, including 24 CFR 982.155, and that all other program administrative expenses have been satisfied.

6. Section 983.10

This final rule revises § 983.10(b) to clarify that PHAs may renew PBC HAP contracts for terms of up to five years, to an aggregate total including the original term and all extensions, of 15 years, depending on the availability of appropriated funds.

Subpart B—Selection of PBV Owner Proposals

7. Section 983.51

The final rule makes several editorial changes to this section. In addition, § 983.51(b)(2) is revised to allow PHAs to select owner proposals without a separate competition for projects that were competitively selected under another program within three years of the PBV proposal selection date. The prior competitive selection cannot have considered future PBV assistance, because such a consideration could give such projects an unfair advantage by wrongly affecting the original competition and thereby tainting the process. Also, the non-competitive selection of a project for low income

housing tax credits (LIHTCs) does not satisfy the requirement of a prior competition.

8. Section 983.52

This section adds additional detail to the general description of housing types to which assistance may be attached under this program. Existing housing is defined to exclude housing for which new construction or rehabilitation has been started. The rule cross-references subpart D as applicable to newly constructed and rehabilitated housing.

9. Section 983.53

This section makes an editorial change to combine § 983.53(a)(2) and (a)(4). Substantively, § 983.53(b) is revised to give PHAs the responsibility to make an initial determination (and HUD approves such determination as the statute requires) as to whether assistance may be attached to a high-rise elevator project that may be occupied by families with children because there is no practical alternative. PHAs may make this initial determination for its entire project-based program, a portion of it, or case-by-case, and HUD may approve the determination on the same basis.

10. 983.56

The NPRM proposed that the overall cap of 25 percent of the total number of dwelling units in the building include units receiving any type of federal, project-based assistance. This final rule limits the units that count against the cap to units receiving PBV assistance under this program, revising paragraph (a)(1) accordingly and removing paragraph (a)(2). Additionally, § 983.56(b)(2)(B) is revised. In the proposed rule, this exception to the 25 percent cap on project-basing units was limited to families in a housing voucher Family Self-Sufficiency (FSS) program under section 23 of the 1937 Act, 42 U.S.C. 1437u.

This final rule revises this exemption to include units that are made available to families that are receiving any type of supportive services that the PHA specifies as qualifying services in its PHA administrative plan. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the FSS contract of

participation or fails to complete another program of supportive services, such failure results in termination of assistance by the PHA, and is grounds for lease termination by the owner. The PHA is responsible for monitoring and ensuring compliance with this requirement. At the time of initial lease execution between the family and the owner, the family and the PHA sign a statement of family responsibility, and HUD will include this requirement in this statement, thus ensuring that the family is aware that the PHA will terminate assistance if the family fails to meet its obligation.

If the unit at the time of such termination is an excepted unit outside the 25 percent cap, the exception continues to apply to the unit as long as the unit is made available to another family receiving qualifying services. A family is deemed to be receiving supportive services if it has at least one family member receiving at least one qualifying service.

The section also is revised to clarify that, generally, a PHA may not require participation in medical or disability-related services. The one exception is that a PHA may require current drug and alcohol abusers to receive drug and alcohol treatment. This requirement is in accordance with HUD's overall policy to ensure that drug and alcohol abusers do not interfere with other residents' health, safety, or right to reasonable enjoyment of the premises of assisted housing. See, for example, 24 CFR 5.858 and 5.860.

11. Section 983.57

The NPRM proposed at § 983.57(b)(1) that a proposed site for project-based assistance be "consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities." This final rule revises proposed § 983.57(b)(1) and adds seven factors that the PHA must consider in determining whether a proposed PBV site is consistent with these goals. Under this final rule, the housing site must be consistent with the deconcentration goals stated in the PHA plan and with civil rights laws and regulations, including HUD's rules on accessibility at 24 CFR 8.4(b)(5). These include whether the site is in an Enterprise Zone, Economic Community, or Renewal Community (EZ/EC/RC); whether the concentration of assisted units will be or has decreased as a result of public housing demolition; whether the census tract is undergoing significant revitalization; whether government funding has been invested in the area; whether new market rate units are being developed in the area,

which are likely to positively impact the poverty rate in the area; if the poverty rate in the area is greater than 20 percent, whether in the past five years there has been an overall decline in the poverty rate; and whether there are meaningful opportunities for educational and economic advancement in the area. Housing under the PBV program may be selected only if consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

12. Section 983.58

Section 983.58(c) is revised to indicate that in the case of existing housing, the responsible entity must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5. The responsible entity must either complete the environmental review requirements of 24 CFR part 58, or HUD must perform the review under part 50, or the project must be determined to be exempt or categorically excluded. Section 983.58(d)(ii) of this final rule clarifies that in the case of review by the responsible entity under part 58, that entity makes the determination whether the project to be assisted is exempt or categorically excluded, and that if the project is exempt or categorically excluded, no further environmental review is needed.

Subpart C—Dwelling Units

There are no substantive changes to this subpart made in this final rule. There are some minor editorial changes.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

13. Section 983.155

The NPRM proposed that the PHA and HUD could set requirements for the evidence of completion of a housing project under this program at § 983.155(b), along with additional documentation that could be required under proposed § 983.155(b)(2). In the final rule, reference to HUD is removed so that the PHA alone sets these requirements.

Subpart E—Housing Assistance Payments Contract

14. Section 983.202

This final rule removes an unnecessary sentence from § 983.202(b)(2). This is an editorial change that does not alter the overall

intent of the section. The sentence stated that HUD provides funds to PHAs to make housing assistance payments to owners. This sentence is redundant as the same idea is stated in the first two sentences of the paragraph.

15. Section 983.203

This final rule conforms § 983.203(h) to the change to the exception to the 25 percent cap, making the exception generally applicable to families receiving supportive services, rather than only to families with a contract of participation under the statutory FSS program at 42 U.S.C. 1437u (*see also* § 983.57, redesignated from proposed § 983.56).

16. Section 983.205

The NPRM proposed that extensions of the HAP contract be in one-year increments. The final rule revises § 983.205(a) to allow for extensions of up to five years.

17. Section 983.206

In § 983.206(b), on "amendments to add contract units," this final rule removes "compliance with Davis-Bacon wage rates during construction" as an example of the legal requirements for a HAP amendment and replaces it with "rents are reasonable."

18. Section 983.209

This final rule adds "spouse" to the list of prohibited family relationships between the owner of a PBV unit and the resident(s) of this unit at § 983.209(e).

Subpart F—Occupancy

19. Section 983.251

This section relates to protection of in-place families; that is, families that are eligible to participate in the program as of the date the proposal is selected, and which reside in a unit that will be placed under a project-based assistance contract. This final rule finalizes similar protections for in-place families that were originally proposed, with the one difference that § 983.251(b)(2) is revised to require that such families be placed on the PHA's waiting list, with an absolute preference for referral to owners and placement in units that become available.

This final rule adds a new § 983.251(d), entitled "Preference for services offered," and redesignates proposed § 983.251(d) as § 983.251(e). This new section allows PHAs to grant a preference to families with disabilities that require the services offered at a particular project. The preference may be applied to those families, including individuals, whose disabilities

significantly interfere with their ability to obtain and maintain themselves in housing; who, without such services, will not in the future be able to maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents cannot be required to accept the particular services offered. The project may be advertised as being for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services offered.

Section 983.252, relating to information to be provided to families, is slightly revised for consistency and to make changes. Paragraph (c) is revised to include alternative formats for persons with disabilities. A new 24 CFR 983.252(d) is added regarding information for families with limited English proficiency.

Section 983.253 is revised in this final rule. Section 983.253(a)(2), stating that the owner "may apply its own admission standards," is replaced with a statement that, like current 24 CFR 983.203(c)(4)(i), the owner is responsible for having written tenant selection procedures. These procedures must be consistent with the purpose of improving housing opportunities for very low-income families and be reasonably related both to program eligibility requirements and to the applicant family's ability to perform its obligations under the lease.

20. Section 983.255

The NPRM proposed in § 983.255(a) that a PHA has no obligation but "may opt to screen applicants for family behavior and suitability for tenancy." This final rule specifies that a PHA may deny admission based on this screening. Proposed § 983.255(b)(2)(vi) gave the owner broad latitude to screen a family's background for a variety of factors, including "other factors determined by the owner." This paragraph is removed from the final rule. The owner may screen for factors "such as" the factors listed in § 983.255(b)(2)(i)–(v). A variety of minor revisions are made to proposed § 983.255 on information that a PHA must provide. These include the provision to the owner of any prior address of the applicant (rather than any immediately prior address) and information relating to drug trafficking by family members. This section also provides that the PHA may give the owner certain information about an applicant family, and that the PHA must disclose to the family a description of the PHA's policy regarding such

information. The requirement that this disclosure must be included specifically in the information package given to a family is removed, although the underlying requirement to give the disclosure to the family is retained.

21. Section 983.256

This final rule strengthens the PHA's ability to ensure that the lease meets the requirements of state and local law. Proposed § 983.256(b)(4) would have allowed the PHA to require revisions to the lease, if necessary. This final rule allows the PHA to decline to approve the tenancy if the lease does not meet the requirements of law.

This final rule adds an item to § 983.256(c), entitled "Required information." New § 983.256(c)(6) requires the lease to specify "the amount of any charges for food, furniture, or supportive services."

The final rule revises § 983.256(f). The NPRM had proposed that, under certain conditions, leases could be for a term of less than one year. This final rule eliminates that option.

22. Section 983.257

The final rule refines the section on owner termination of tenancy and eviction by specifying in a new § 983.257(b) that the owner shall not terminate a lease under the PBV program without good cause as meant in 24 CFR 982.310 (except for 24 CFR 982.310(d)(1)(iii) and (iv), and under the eviction provisions of 24 CFR 5.858–5.861). Otherwise, an owner may renew or non-renew a lease upon expiration, but if the owner does not renew without good cause, the family must be provided tenant-based assistance and the unit must be removed from the coverage of the HAP contract. A new § 983.257(c) is added to make the section consistent with § 983.56 and clarify that, if a family is living in a unit excepted from the 25 percent per-building cap on project-basing because of the family's participation in an FSS or other supportive services program, failure of the family without good cause to complete its FSS or supportive services program is grounds for lease termination by the owner.

23. Section 983.258

This section provides that the owner may collect a security deposit from the tenant, and that the deposit may be used when the tenant moves out to reimburse the owner for any unpaid rent, damages to the unit, or other money that the tenant owes to the owner. This final rule makes only minor editorial revisions.

24. Section 983.260

This final rule makes a minor technical change to this section to make the second sentence of paragraph (a) into a new stand-alone paragraph at § 983.260(d). This change is made because this sentence is actually a separate consideration from the remainder of paragraph (a). Paragraph (a) generally concerns termination of the lease at the family's option after one year of occupancy; the new § 983.260(d) concerns termination before one year of occupancy, which is treated differently.

25. Section 983.261

This section governs referrals to units that are excepted from the 25 percent cap on project basing. Under § 983.56(b), units in a multifamily building that are occupied by the elderly, families with disabilities, or families receiving supportive services are exempt from the overall 25 percent cap. This final rule revises § 983.261 in accordance with § 983.56 to expand the exemption from families with a contract of participation in the statutory FSS program under 42 U.S.C. 1437u to units made available to all families receiving supportive services as stated in § 983.57(b)(2)(ii). A family is "receiving supportive services" if it has at least one member receiving at least one such service. If a family successfully completes its supportive services program, the unit remains an excepted unit as long as the family resides in the unit. If a family fails to complete its FSS or other supportive services participation, or no longer has a member qualifying as elderly or disabled, the family must vacate the unit in a reasonable time established by the PHA and the PHA shall cease paying housing assistance on behalf of the non-qualifying family. In the case of a partially assisted building, the owner has the choice of substituting a different unit in accordance with 983.206(a) or terminating the lease. The assistance for a family that is not in compliance with its obligations, such as non-completion of its FSS program without good cause, shall be terminated by the PHA.

Subpart G—Rent to Owner

26. Section 983.301

The proposed rule would have provided for annual redeterminations of the rent to owner (at § 983.301(a)(3)), and for the amount of rent to owner (except for certain tax credit units) to be up to the lowest of the payment standard amount for the bedroom size minus any utility allowance, the reasonable rent, or the rent requested by the owner. This final rule significantly

revises these provisions in response to public comments, which are described below at section IV of this preamble. Under this final rule, the rent to owner is established at the beginning of the HAP contract term. The rent to owner, for non-LIHTC units, may not exceed the lowest of an amount determined by the PHA, not to exceed 110 percent of the applicable FMR or HUD-approved exception payment standard for the unit size less any utility allowance; the reasonable rent; or the rent requested by the owner. The tax credit rent is similar, except that the first of the three amounts is the tax credit rent minus any utility allowance. The tax-credit rent provision applies to certain tax credit projects not located in a qualified census tract. A “qualified census tract” is defined as any census tract or equivalent area defined by the Census Bureau in which: (1) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income; or (2) the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD. The rent must be redetermined at the owner’s request or whenever there is a five percent or greater decrease in the published FMRs. The owner must request any rent increase at the annual anniversary of the HAP by written notice to the PHA.

Under final § 983.301(f), when determining the initial rent to the owner, the most recently published fair market rent (FMR) and utility allowance schedule applies, rather than, as proposed, the payment standard amount on the PHA’s payment standard schedule.

27. Sections 983.302 and 983.303

These sections apply to redeterminations of the rent to owner. This final rule revises these sections so that, consistent with § 983.301, the time for redetermination is upon the owner’s request and when there is a five percent or greater decrease in the published FMR.

28. Section 983.304

This section addresses limitations on the rent to owner for units that have subsidies under programs in addition to the PBV program. Proposed § 983.304(b)(2) would have provided that the rent to owner could not exceed the amounts allowed in these programs, enumerated under proposed § 983.304(b)(1). This final rule adds tax credit projects to this list. In addition, in order to provide paragraph designations for all sections, the proposed undesignated introductory section is redesignated § 983.304(a) in

this final rule, and the following sections are redesignated (b)–(f), accordingly.

Subpart H—Payment to Owner

29. Section 983.354

This section provides that meals and supportive services, generally, may not be charged as part of the rent to the owner, and that an owner may not use non-payment of such charges as grounds for termination of tenancy. The exception to this general rule is that in an assisted living development, owners may charge families or their members for meals or supportive services. In the case of such a development, the final rule adds a proviso that non-payment of such charges may be grounds for the owner to terminate the lease. The HAP payment may not be used for the costs of meals and supportive services.

IV. Responses to Public Comments

Comments Addressed to the Rule Generally

Comment: One commenter questioned why the provisions applicable to the project-based voucher program do not also apply to the former PBC program. Another commenter stated that HUD should combine the certificate and voucher programs and stop having multiple versions of one program in operation.

HUD Response: The Department is required by its regulations on rulemaking at 24 CFR 10.2 to publish regulations to implement, interpret, and prescribe law and policy for future effect. Thus, these regulations cannot be made retroactive to apply to the former program.

Comment: A commenter stated that PHAs are currently being funded from quarter to quarter based on actual utilization, and that, as a result, would likely have to hold or set aside some of their tenant-based funding in order to facilitate project-based voucher development proposals. “The proposed rule should more specifically address the allocation of funding for the PBV program as it relates to this issue.”

HUD Response: HUD does not agree that this rule should address funding issues as it relates to the PBV program. In Calendar Year 2005, PHAs were provided with a specified amount of funding that was determined at the beginning of the calendar year and was not subject to quarterly or other utilization changes. PHAs are charged with managing their resources within program requirements to ensure that they do not incur costs beyond their annual funding allocation. If a PHA elects to project-base any of its voucher

units, it must manage its resources to ensure that the agreement to enter into a HAP contract agreement and HAP contract commitments will be honored.

Comment: One commenter stated that PHAs should be able to give preferences to “CHDOs, HOME, HOPE VI, LIHTC properties” and similar projects, and to housing providers with a history of “responsible practices and proper reporting.”

HUD Response: CHDOs most likely refers to community housing development organizations that are eligible to participate in certain HUD Community Development Block Grant programs. The requirements for CHDOs are stated at 570.204(c). HOME probably refers to the HOME Investment Partnerships Act, 42 U.S.C. 12701 note. HOPE VI is the popular name for the program for revitalization of public housing now codified at 42 U.S.C. 1437v.

The final rule provides that in cases where a federal, state, or local housing assistance, community development, or supportive services program that requires a competitive selection of proposals has already competitively selected proposals, a second competition for PBV is not required. The original competition, however, cannot have considered the possibility of future PBV assistance, but the selection must have been based on the project’s merits at the time of the competition. However, the PHA, if it is in accordance with its administrative plan, can give a preference to CHDOs, HOME, and LIHTC projects.

Comment: A commenter stated “we remain concerned about the need for HUD’s continued involvement in a given PHA’s administration of the PBV program.” This commenter stated that PHAs are independent governmental agencies and can police themselves with respect to the proper and needed use of public funds. This commenter cited proposed § 983.51 (referenced by the commenter as “dealing with PHA-owned units”) and § 983.55 (subsidy layering) as particular concerns. Because many PHAs are heavily involved in real estate development and subsidy layering reviews—“perhaps even better than a HUD staff person who is not intimate with the local real estate development market”—PHAs should be allowed to make determinations in both those areas.

HUD Response: Congress specifically set in place safeguards against possible program abuse regarding PHA-owned units by requiring HUD to ensure that Housing Quality Standards (HQS) inspections and rent determinations are conducted by outside entities. To

protect against possible PHA bias or abuse, and to ensure fairness, HUD has promulgated program regulations to carry out Congress' intent. The Office of Public and Indian Housing will be issuing a separate regulation to delegate subsidy layering reviews (see response to comments on § 983.55).

Comment: Five commenters commented on the relationship between 24 CFR part 982 and part 983. Four commenters stated that HUD should add a general provision that in the event of a conflict between parts 982 and 983, part 983 shall prevail over any inconsistent provisions of part 982 with respect to the PBV program. Another commenter stated that in the event that HUD has missed something in part 982 that is not applicable to the PBV program, there should be leeway for HUD to determine, short of a regulatory waiver, that the provision is inapplicable to the PBV program.

HUD Response: 24 CFR 982 is the regulation for the tenant-based voucher program. The rule identifies the provisions in 24 CFR 982 that do not apply to PBV assistance under part 983. HUD believes it has accurately cross-referenced part 982 in the 983 regulation, but if HUD determines that any errors have been made, HUD will publish corrections in the **Federal Register**.

Comment: A commenter stated that there is a disincentive to participation in the PBV program because PHAs want to designate a portion of their Section 8 allocation to leverage investment or LIHTCs. However, while these units are undergoing construction or substantial rehabilitation, they are counted adversely in the PHA's lease-up rate calculation. This commenter recommends a grace period for such PHAs during construction or substantial rehabilitation. This grace period should be provided as long as there is a well-defined construction plan in place with specific time frames that are documented and submitted to HUD.

HUD Response: During construction or substantial rehabilitation, units that will have PBV assistance attached pursuant to an agreement do not require the setting aside of vouchers and budget authority committed for those units. Rather such set asides are required only after completion of the project.

However, the PHA must ensure that budget authority is available for those units upon execution of the HAP contract. If a PHA is leased up to its budget authority, it must ensure that through the turnover of vouchers it will have the necessary units and dollars to meet its contractual commitments when the project is ready to be occupied.

PHAs are responsible for monitoring their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than is available.

Comment: A commenter also stated that "Agencies should be able to lease the necessary number of vouchers through monthly turnover by the time they are needed for occupancy under the PBV program. To allow for this, HUD should not consider budget authority committed to PBV assistance for this reason to be unutilized." This change should also be reflected in HUD's Section Eight management assessment (SEMAP). HUD should change its procedures for determining agencies' lease-up rates and corresponding budget authority. Similarly, another commenter stated that, should a PHA set aside vouchers to project-base, the vouchers set-aside should not count against SEMAP or any other indicator. PHAs should be able to set-aside vouchers based on projections of the expected availability of vouchers due to turnover, attrition, or expected allocation of additional vouchers.

HUD Response: See response to comment above.

Comment: One commenter stated that HUD should increase the total number of vouchers available. "This is the best and most successful housing subsidy program in the country."

HUD Response: The appropriations for the voucher program, as well as the percentage of voucher funding that may be project-based, are both set by Congress.

Comment: A commenter stated that "The rule proposed is still inconsistent with the congressional intent to simplify the process for project-basing vouchers * * *. Regrettably, the proposed rule continues to make the program too cumbersome to be appealing to many housing agencies."

HUD Response: HUD disagrees that the proposed rule makes the program too cumbersome. The proposed rule has simplified and deregulated many aspects of the PBV program, such as competition and HQS inspections. The rule also eliminates any HUD approval actions during the development process resulting in a decrease in the necessity for HUD-approved exceptions and regulatory waivers. The final rule also simplifies the selection of proposals even further than originally proposed.

Comment: A commenter stated generally that transitional housing is important because it assists the homeless with skills necessary to become good tenants to whom landlords would be willing to rent. Accordingly, the PBV rule should be modified so that it will work with transitional housing

servicing homeless persons and persons with special needs.

HUD Response: The final rule provides that transitional housing is ineligible housing under the project-based voucher program. The statute governing the project-based voucher program specifically provides that low-income families assisted under the program may move after the family has occupied a unit for 12 months. If a transitional housing agreement requires a family to move prior to 12 months, the law governing the project-based voucher program does not give families the right to a tenant-based voucher prior to 12 months. Thus, in the situation described, a family would not be entitled to tenant-based assistance under the law governing the project-based voucher program.

Also, if a transitional housing agreement requires a family to move some time after the initial 12 months, a PHA would be required under the law to provide such a family with tenant-based assistance. If the project-based voucher contract with the owner extends beyond the transitional housing agreement, the PHA would also be required to refill the units vacated by the previous transitional housing participant. Given the scarcity of funding, such a result is undesirable. Additionally, if a family must leave after the initial 12-month lease in accordance with the transitional housing requirements, the PHA may not have a voucher or other form of assistance readily available. Since the participant would be required to move, the participant would have to do so without the benefit of subsidy since the PBV law only requires PHAs, after the initial 12 months, to issue a voucher or other form of assistance if available. The Department believes that transitional housing is inconsistent with the project-based voucher program. Thus, the final rule makes transitional housing an ineligible housing type under the project-based voucher program.

Subpart A (Proposed §§ 983.1–983.10)

Comment: In reference to proposed 24 CFR 983.2(c)(6)(iv), one commenter stated that the proposed rule incorrectly identifies 24 CFR §§ 982.551–555 as being under part 982, subpart K. These sections are codified under subpart L.

HUD Response: HUD agrees and this final rule includes this technical correction.

Comment: A number of commenters questioned the definition of "existing housing" in § 983.3, seeking specificity about dollar amounts of repair that would distinguish substantial rehabilitation from existing housing.

Five commenters suggested that there be a “safe harbor” dollar amount of repairs that constitute existing housing. One of these commenters asked, if existing housing requires less than \$1,000 of rehabilitation, and “rehabilitation” is any unit that requires \$3,000 or more, how are units requiring \$1,000–\$3,000 worth of work categorized?

HUD Response: In this final rule, HUD has retained the language contained in the proposed rule. HUD has decided not to accept the suggestion of specifying a dollar amount since costs attributable to repairs and rehabilitation are market-driven and may vary widely depending upon individual market areas. Such decisions are properly left up to the PHAs.

Comment: Commenters objected to the definition of “comparable rental assistance” in proposed § 983.3, stating that the definition should define comparable rental assistance as gross rent that costs the family no more than 30 percent of their adjusted income, rather than 40 percent. One of these commenters stated that setting the standard at 40 percent violates the statute, and argued that the standard should be 30 percent, subject to a limited exception if the gross rent is greater than the PHA’s payment standard.

HUD Response: The final rule defines comparable rental assistance as “a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that requires the tenant to pay no more than 40 percent of its adjusted monthly gross income for rent.” Section 8(o)(3) of the United States Housing Act of 1937 governing the voucher program provides that at any time a family initially receives voucher assistance, the family rent contribution is limited to 40 percent of adjusted income. The definition of comparable rental assistance contained within the final rule does not violate the statute.

Comment: A commenter stated that the lobbying restriction in proposed § 983.4 is obsolete.

HUD Response: HUD reviewed the lobbying restrictions in § 983.4 and determined that they are not obsolete and therefore continue to apply to the project-based voucher program.

Comment: A commenter stated that § 983.5, which describes the project-based program, should specify when PBVs count toward the PHA’s utilization rate. This commenter states that “the Agreement to enter into a Housing Assistance Payment (HAP) contract is the appropriate trigger for SEMAP purposes.”

HUD Response: HUD has considered this comment. Currently SEMAP does not exclude units under an Agreement from total units for SEMAP scoring purposes under the leasing indicator. Since units and dollars that are committed under an agreement do not have to be set aside during the development or rehabilitation phase of a project, these units will not be excluded from the SEMAP leasing indicator. PHAs must monitor their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than available. If a PHA is fully leased, it may have to withhold issuance of vouchers for a number of months based on attrition rates to ensure that units and dollars will be available at the time the HAP contract is executed.

Comment: A commenter stated that § 983.5(b), which references Section 8 administrative fees, should be revised. This commenter stated that PHAs that own PBV developments are restricted to a significantly lower administrative fee than private owners. However, PHAs must also contract for services at increasing administrative costs. This creates a disincentive to participation. Therefore, PHAs should be entitled to the same administrative fee as private owners.

HUD Response: HUD has considered this comment, but is not adopting it for the following reasons. The United States Housing Act of 1937 requires that a unit of state or local government or another entity approved by HUD perform certain functions for PHA-owned units. The act also authorizes HUD to decrease the administrative fees for PHA-owned units. In the case of PHA-owned units, some activities for which an owner is compensated from rental income under other HUD project-based programs result in a reduced administrative fee. For example, income-certification and re-examination are tasks for which PHAs are reimbursed as an owner through rental income under the PBV program.

Comment: Two commenters expressed concerns about the 20 percent cap on project basing. One of these commenters stated that the cap is too high and would force consumers “to use their vouchers in projects, at least for a period of time,” and will not have the option of using them with private landlords. The commenter stated that this does nothing to increase the amount of affordable, accessible housing and that the proposed regulation promotes segregation, loss of affordable units, and subjects tenants to impossible compliance regulations like workfare. This commenter recommends full

funding of the Section 8 program in its present form, as well as additional changes in regulations to allow those with very low incomes to qualify for housing under LIHTC programs, such as the 80/20 program, HPD programs, and the Mitchell-Llama programs.

Another of these commenters stated that the 20 percent cap is a “significant restriction” on a PHA’s ability to project-base vouchers and that HUD should pursue statutory changes to make the same flexibility that exists in the Moving to Work (MTW) program available to all PHAs.

HUD Response: The commenter refers to various assisted housing programs. The 80/20 program is a form of bond-financed tax credit that derives its name from the requirement that no more than 80 percent of the units in an LIHTC project financed with tax-exempt private activity bonds are to be occupied by individuals or families at market-rate rents, while the other 20 percent must be rented to low-income (no more than 50 percent of median) households. HPD is the New York City Department of Housing Preservation and Development. Mitchell-Lama is a New York State program of moderate- and middle-income rental and limited-equity cooperative developments. MTW is a HUD demonstration program codified under 42 U.S.C. 1437 note, which allows PHAs to design and test ways to promote self-sufficiency among assisted families, achieve programmatic efficiency and reduce costs, and increase housing choice for low-income households.

HUD must work under the current statutory framework that restricts project-based assistance to 20 percent of a PHA’s budget authority under the voucher program.

Comment: Four commenters stated that proposed § 983.7(a)(2), which provides that relocation costs may not be paid out of voucher program funds, should not prohibit PHAs from using funds in the Section 8 administrative fee reserve account to pay relocation costs.

HUD Response: HUD has considered this comment and decided to adopt it. Provided payment of relocation benefits is consistent with state and local law, and provided the use of the administrative fee reserve is consistent with 24 CFR 982.155, PHAs may use their administrative fee reserves to pay for relocation assistance after all other program administrative expenses are satisfied. Program participants should also be mindful that HUD and Congress have from time to time restricted the use of administrative fee reserves.

Comment: Proposed §§ 983.9 and 983.53(a) prohibit voucher funding to be

used with cooperative housing and shared housing. Two commenters stated that they object to this exclusion of cooperative housing. These commenters stated that this "is an arbitrary exclusion, not required by statute, and represents a change from the Initial Guidance." These commenters also state that the exclusion is against HUD's "regulations and policies for other project-based Section 8 programs, as well as tenant-based Section 8," and that there are numerous examples of cooperative projects that have been good housing providers. One of these commenters stated that "denying project-based Section 8 to * * * co-ops would make the projects unfeasible and be unfair to the low-income seniors who benefit from the creation of this affordable housing." This commenter also states that cooperatives have been proven to have lower operating costs than comparable rentals, and, therefore, it is in the government and public interest to encourage Section 8 in cooperatives.

Another commenter similarly objected to the exclusion of shared housing. The commenter stated that "[shared housing] can be an extremely effective supportive transitional housing model that is being extensively used around the country."

HUD Response: HUD considered these comments, but did not adopt them for the following reasons. Cooperative housing is not a permitted housing type under the project-based voucher program. Cooperative housing is considered homeownership and Section 8(y) of the United States Housing Act, which governs homeownership under the voucher program, limits the form of subsidy PHAs may use to provide homeownership assistance to tenant-based assistance. The comment regarding shared housing is also rejected since there are provisions to allow the use of group homes and congregate housing that are similar to shared housing. Additionally, to permit shared housing under the PBV program would require PHAs to refer families to an owner to occupy a unit with families that are not acquainted with each other, which may not be a desirable housing situation. This would result in many families refusing to share housing and as a result have families living in oversized units in violation of program guidelines.

Subpart B (Proposed §§ 983.51–983.59)

Comment: A number of commenters submitted comments regarding proposed § 983.51, which requires competitive selection of proposals for project-basing with an exception for

proposals already selected pursuant to a competitive government housing assistance, supportive services, or community development program.

More than ten commenters supported the exception to competitive selection for units that have been previously competed. Four commenters stated that this proposal would save time and money and avoid needless duplication.

Some commenters opposed requiring any competition. One commenter stated that the competitive selection procedure, including the requirement for prior competitive selection, is too rigid. This commenter stated that these Reform Act requirements do not apply to PHAs. Since there is no statutory requirement for a competitive process, PHAs should be given discretion in how they award vouchers. Another commenter stated that selection should be allowed based on a request from a developer or owner; based on a HOPE VI site or similar endeavor having PHA participation; or public notice inviting competitive proposals. Another commenter stated that proposals subject to previous competitive selection should be exempt from additional environmental, site selection, and subsidy layering reviews; however, the rule should allow PHAs to use PBVs without any competition because "agencies that need to lay out annual budgets and support their annual program operations would be placed in a compromising position. Agencies could thus face financial disincentives and opt out of using this important program." Another commenter stated that there should be no competition, but PHAs should develop and provide a clear set of guidelines to applicants. This commenter stated that the statute does not require competitive selection, but does require that HAP contracts be consistent with the agency's plan. This commenter stated that competitive selection is neither practical nor necessary, given the limited number of vouchers that will be available. Most affordable housing developments have funding from a variety of sources, and adding yet another competitive funding cycle complicates the process of financing affordable housing units, and adds unnecessary time and costs.

Some commenters criticized specific aspects of the competition provisions. Two commenters, while agreeing generally with the proposal on competitive selection, stated that the rule should make clear whether the PHA must include in its administrative plan its intent to make PBVs available based on a prior competition. Another commenter supported the prior competition exemption and also stated

that the rule should give PHAs some discretion in establishing the competitive criteria whereby they will select units for project basing. A commenter stated that a news release and web publication should be sufficient to satisfy the advertising requirement in proposed § 983.51(c). A commenter, while agreeing with competitive selection generally, stated that the prior competition exception would appear to allow subsidy layering.

HUD Response: No response is necessary to the supportive comments. As to other comments, HUD believes that many commenters misunderstand the nature of the competitive selection of proposals. The purpose of the notice is to provide interested parties a fair opportunity to participate in the program. The final rule clarifies that PHAs must publish a general notice in accordance with 983.51(c) to inform the public that the PHA is soliciting proposals for the PBV program. The notice must indicate that the PHA's selection policy is available for viewing at the PHA's office. In addition, the PHA's selection criteria must be stated in the PHA's administrative plan. HUD will clarify that PHAs may target particular units in desirable neighborhoods or key "turning point" buildings in established revitalizing areas. One commenter suggested allowing PHAs to substitute environmental, site selection, and subsidy layering reviews conducted under previous competitions for the project-based voucher program. In response to the suggestion, HUD believes it would be impractical and infeasible for HUD to monitor requirements under individual state and local programs to assure consistency with federal statutory and regulatory requirements. HUD, therefore, is not adopting that comment. Site and neighborhood, site selection standards, environmental reviews, and subsidy layering requirements continue to apply.

Comment: Proposed § 983.51(e) prohibits PHAs from using PBV assistance with public housing units. A number of commenters suggested that this language was overbroad and should be clarified. Two commenters stated that the language "could be read too broadly to include non-public housing units in a HOPE VI or public housing mixed finance project that contains both public housing units and non-public housing units." Three commenters stated that the definition of "public housing" in the U.S. Housing Act includes units receiving both capital and operating assistance. Therefore, under this rule, PHAs could not use

PBVs in HOPE VI developments. The commenters object to this result. One commenter stated that using PBV assistance in conjunction with HOPE VI and replacement housing factor (RHF) funds is especially important in areas where there has been a significant amount of public housing demolition. Therefore, more replacement housing could be produced. In many markets, PBVs alone do not provide enough of an incentive to develop affordable housing. This commenter and another commenter stated that pairing PBV with capital funds would provide enough operating and capital subsidy to develop long-term affordable housing, and suggests that the first sentence of proposed § 983.51(e) be revised to read: "Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds." Another commenter agreed and stated that "Congress made substantial changes to the PBV program in Section 232 of the 2001 HUD Appropriations Act, with the intent of making the program more flexible and workable. One of the important changes Congress made was to repeal a former statutory prohibition of project-based assistance for units to be constructed or rehabilitated with funds under the United States Housing Act of 1937." Proposed § 983.51(e) could be read to reinstate the bar on providing PBV assistance for units to be constructed or rehabilitated with U.S. Housing Act funds notwithstanding Congress' repeal of that bar.

HUD Response: The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-rata must occur. For example, if a project receives \$2,000 in non-public housing HOPE VI funds and \$1,000 in

Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program.

Comment: Proposed § 983.53 provides that certain types of housing are ineligible for PBV assistance. A number of commenters commented on this section. One commenter stated that there may be situations where location of a facility, especially supportive housing, on the grounds of a medical or mental institution is appropriate (see proposed § 983.53(a)(2)). If the intent of the rule is to prevent subsidizing of hospital rooms, that can be accomplished another way.

HUD Response: HUD has considered this comment and is not adopting it for the following reasons. To allow project-based assistance units on the grounds of medical or mental institutions would be inappropriate since the residency requirements for such housing facilities are usually limited to patients of the medical or mental institution. Housing for medical and mental institutions is generally funded privately or by local or state governments. The PBV program is not intended to be used to substitute for financing of housing that already exists for individuals who are residents of mental or medical facilities with federal funds appropriated to assist low-income families.

Comment: Five commenters stated that the PHA, not HUD, should determine when there is no practical alternative for a high-rise elevator project that may be occupied by families with children (see proposed § 983.53(b)). This could be particularly important where a PHA has a better understanding of the preservation needs of the community. Another commenter stated that the term "high-rise" should be defined because even two, three, or four story buildings that provide excellent family housing may have elevators. Another commenter stated that some existing high-rise developments provide good housing and should be preserved. The limitation on high-rise buildings with elevators should apply only to new construction. Another commenter stated that in Baltimore, high-rise buildings with elevators may be a significant source of housing. "We believe that that high-rise elevator buildings with one and two bedroom apartments * * * should be eligible."

HUD Response: While the statute gives the authority to make the

determination about high-rise elevator projects to the Secretary, HUD is also mindful of the commenters' concerns. Therefore, this final rule revises the rule so that PHAs may make an initial determination, but HUD must approve a PHA's finding that there is no practical alternative.

Comment: Proposed § 983.58(c)(2) makes the release of PBV funds contingent on an environmental review being performed. A number of commenters stated that it is unclear what "release of funds" means because the funds will have already been allocated to the PHA.

HUD Response: Under part 58, HUD may allocate funds to the PHA, but the PHA may not commit or expend these funds until an environmental finding is completed by the responsible entity (RE). If the finding is that of an exempt activity (§ 58.34) or a finding of activity that is categorically excluded and not subject to § 58.5, then the PHA does not have to submit a request for release of funds (RROF) and certification, and no further approval from HUD is needed by the PHA for the draw down of funds to carry out exempt activities and projects. However, the RE must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption.

In those cases where the RE determines that an environmental review is required, the RE will perform such review and execute the certification portion of the RROF by completing only Parts 1 and 2 of HUD form 7015.15 and by forwarding the form to the PHA, which must complete Part 3 before providing the form to HUD for approval. The PHA must await HUD approval from the Field Office Public Housing Director as the HUD Authorizing Officer; the approval is obtained either on HUD form 7015.16—Authority to Use Grant Funds or by a letter dispatched to the PHA. Once received, the PHA may then draw down funds under the voucher annual contributions contract for the project-based voucher project.

Comment: One commenter commented on proposed § 983.53(d), which prohibits PHAs from attaching PBV assistance to units occupied by ineligible families. This commenter stated that the PHA should be given the flexibility, between the time the Agreement and HAP contract are executed, to move the family to another unit and free the unit for an eligible family.

HUD Response: It is HUD's policy to minimize displacement and what the commenter proposes is unnecessary.

Section 983.206 allows PHAs to add units to the HAP contract when an ineligible family moves out.

Comment: Proposed § 983.54 prohibits PBV assistance from being attached to units that have other forms of Section 8 and other types of federal assistance. Two commenters stated that the rule should make clear that in mixed-finance projects, this prohibition applies only to the same units that are receiving subsidies.

HUD Response: This final rule clarifies that the use of PBV assistance in mixed-finance projects that are not classified as ineligible housing is authorized. Section 983.54 discusses prohibited types of housing under the project-based voucher program. Since the type of units the commenter mentions is not listed, the unit type is not an ineligible housing type.

Comment: Two commenters stated that § 983.54(a), for clarification, should add the word "unit" after "public housing."

HUD Response: The comment is accepted. The final rule is revised to include this clarification and also to specify that the unit is a "dwelling unit."

Comment: A commenter stated that an exception to the general rule should be made for holders of enhanced vouchers who received those vouchers when a mortgage on an older, assisted 236 project, which may have had a high tenant rent contribution, was prepaid. PHAs should have the flexibility to replace these enhanced vouchers with PBVs to reduce these tenants' rent contribution to 30 percent of adjusted income.

HUD Response: The comment relates to an issue that is beyond the scope of this rule. Section 8(t) of the United States Housing Act of 1937 explicitly limits enhanced voucher assistance to tenant-based assistance under section 8(o) of the Act.

Comment: One commenter stated that proposed § 983.54(a), barring a PHA from attaching project-based assistance to "public housing units," is a carry-over of current § 983.7(c)(1) that predates the QHWRA. In QHWRA, Congress authorized PHAs to provide capital funds only and changed the definition of public housing to include units in a mixed-finance project that receive capital or operating assistance. Section 983.7(c)(1) was intended to bar project-based assistance from being attached to units that were receiving operating assistance. It was not intended to bar using project-based assistance with units that were constructed or rehabilitated with capital funds under the 1937 Act. HUD should clarify that

§ 983.54(a) and the last sentence of § 983.54(e) apply only to public housing units receiving operating subsidies under section 9(e) of the 1937 Act, 42 U.S.C. 1437(g)(e). Two other commenters agreed, stating that the rule should clarify that project-based assistance can be used with HOPE VI or capital funds.

HUD Response: HUD has considered these comments with the result that this final rule retains the proposed rule language, but clarifies when project-based voucher assistance may be combined with HOPE VI funds. The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that the public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is impermissible to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine PBV and HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-rata must occur. For example, if a project receives \$2,000 in HOPE VI funds and \$1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any public housing funds, the units may be assisted under the PBV program.

Comment: One commenter asked that HUD not make projects that receive "operating support" ineligible for PBV. "Sometimes projects need additional operating cash flows due to unexpected increases in operating costs and expenses." Another commenter stated that, as part of a plan to end long-term homelessness, "we urge that the rule be amended to permit replacement of temporary subsidy with PBVs, or to clarify that such replacement is permissible." This commenter also stated that there may be situations, especially in supportive housing, where operating cost subsidy is required, despite rent subsidy, to ensure affordable rents and achieve project rent

payment standards. This commenter suggested that HUD delete § 983.54(d) or revise it to permit operating subsidy where other governmental operating cost subsidy is required and demonstrated through the subsidy layering review to be necessary to the project. This commenter recommended that a new § 983.54(m) be added to read:

"For purposes of paragraphs (c), (d), and (l), rental or operating costs subsidies intended to terminate upon implementation of a HAP contract shall not be considered "governmental rent subsidy," "governmental subsidy," or "housing subsidy."

HUD Response: HUD considered these comments, but did not adopt them. With respect to the public housing program, it is statutorily impermissible to combine Public Housing Operating funds with PBV funds. Supportive housing programs that receive operating funds are also ineligible under the PBV program since rent is generally included as an operating expense.

Comment: A number of commenters objected to § 983.55, which requires a subsidy layering review to be conducted by HUD or an approved entity before a PHA may enter into a HAP contract. Commenters objected both to the overall requirement of a subsidy layering review and to the conduct of the review by HUD.

One commenter stated that subsidy layering should not be required as rent caps and other guidance should suffice. If subsidy layering is to be required, the rule should be amended to allow the PHA to conduct the review and receive just compensation. One commenter stated that there should be an exception for projects that provide extensive support services, such as projects that serve the homeless. Another commenter stated that if the PHA determines that there is no other government subsidy involved, no subsidy layering review should be required. Another commenter stated that the rule should permit additional governmental subsidy when necessary for the success of the project. One commenter questioned whether subsidy layering analysis applies to every application that shows public capital investments in the form of loans or grants, and stated that such an analysis should not be required where the bulk of public financing is through loans and there is no tax-credit financing.

HUD Response: Because prevention of excessive subsidy is statutorily required, this final rule retains the requirement for subsidy layering reviews.

Comment: One commenter stated that HUD should not be involved in subsidy

layering reviews. Other commenters stated that section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) requires that, where low-income housing tax credits are involved, the state tax credit allocating agency must do the review. Still another commenter stated that while use of PBV must be consistent with subsidy layering, the rule "could be misconstrued to create additional bureaucratic barriers" and that the rule should clarify that it does not supersede authority of Housing Credit Agencies (HCAs) and Housing Finance Agencies (HFAs) to conduct the review when they are involved because of tax credits. When there is such an agency already involved, HUD should not have to determine individually whether it is an appropriate independent agency to do the review. Two commenters stated that a subsidy layering review for this program should not be required when another office or agency is authorized to perform a subsidy layering review or has recently performed such a review in connection with other assistance. One commenter stated that the rule should clarify what are approved entities and what entities may conduct a layering review. This should include entities already approved or required to perform such reviews in HUD programs.

HUD Response: The issue of entities that can perform subsidy layering reviews is addressed in statute and guidance published as **Federal Register** notices, and, hence, is not appropriate for treatment in this rule. Pursuant to Section 911 of the Housing and Community Development Act of 1992, as amended, 42 U.S.C. 3545 note, HUD has issued guidelines in the form of **Federal Register** notices on February 25, 1994 (59 FR 9332), and December 15, 1994 (59 FR 64748). Under these notices, the Office of Public and Indian Housing performs subsidy layering reviews for programs under its jurisdiction with input from field offices. HUD may invite HCAs to perform subsidy layering reviews in connection with projects receiving low-income housing tax credits, by publishing a **Federal Register** notice along with the guidelines that HCAs must follow in conducting subsidy layering reviews. PIH may publish revised guidelines as a **Federal Register** notice in the near future.

Comment: A number of commenters commented on the Family Self-Sufficiency (FSS) program exemption to the 25 percent cap on project-basing, with most commenters stating that the exemption is too narrowly limited to statutory FSS programs under section 23 of the 1937 Act, 42 U.S.C. 1437u. Many

commenters expressed the view that there should be a broader definition of services that qualify for the exemption to the cap. Commenters stated that "other tools are available than FSS, such as local self-sufficiency programs * * *," and that a broader definition of qualifying services is a better alternative than the FSS program alone. Some of these commenters cited specific local programs as ones that should qualify for the exception to the cap. Along these lines, three commenters suggested that the term "families receiving supportive services" be defined as "families receiving services essential for maintaining or achieving independent living, such as, but not limited to, counseling, education, job training, health care, mental health services, alcohol or other substance abuse services, child care services, or service coordination and case management services." One commenter stated, in addition, that HUD should remove § 983.56(b)(2)(ii) and replace it with the phrase "Families receiving supportive services." Another commenter stated that the limitation of supportive services to the FSS program is arbitrary and impractical. First, families in self-sufficiency programs other than FSS in many cases receive services that are as comprehensive or more comprehensive than FSS. Second, funding for FSS coordinators has been shrinking in real terms in recent years. One commenter stated that "* * * service programs run by many of the faith-based organizations we are partnering with would not qualify for this exception." Two commenters stated that it is inconsistent with statute to limit "families receiving supportive services" to "FSS families," because the statute refers to the broader concept of "supportive services."

HUD Response: HUD has considered these comments and adopted the suggestion to allow for services other than those services associated with the statutory FSS program under 42 U.S.C. 1437u. Under the Final Rule, PHAs are authorized to establish the type of services and the extent to which services will be provided to allow exceptions to the 25 percent limit. PHAs must state in their administrative plans what these services are. The final rule also clarifies that PHAs are responsible for determining that units are made available to families that are receiving the services in order for the unit to be and to remain excepted from the cap (see § 983.56(b)(2)(ii)(C)) and ensuring that assistance is terminated if families living in exempted units fail without good cause to complete their FSS or supportive services obligation.

Comment: One commenter stated that the narrow definition of social services that qualify for the exception to the cap "will exclude many chronically homeless individuals and families—who may neither participate in the FSS program nor qualify as 'disabled' under the Section 8 statute due to a primary diagnosis of alcoholism or substance abuse. Such a result would be clearly contrary to the Administration's commitment to prioritize this vulnerable population within all HUD programs."

HUD Response: See response above.

Comment: Two commenters stated that HUD should provide more flexibility with respect to the FSS exception to the 25 percent cap on project basing and make clear that the PHA can make its own determination what constitutes adequate supportive services.

HUD Response: See response above.

Comment: Two commenters stated that the proposed rule improperly imposes a work requirement by allowing PHAs to terminate assistance to a family not in compliance with its FSS contract of participation. "The statute is silent about any such condition of continued occupancy."

HUD Response: Since the family is receiving PBV assistance for a unit outside the statutory 25 percent cap because of its participation in supportive services, the family necessarily loses that right if it fails with respect to its FSS contract or its supportive services program. Therefore, this final rule provides that assistance to such a family can be terminated. However, as long as the unit continues to be made available to qualifying families, the unit can continue to receive assistance and benefit another family participating in supportive services.

Comment: A number of commenters stated that other forms of project-based subsidy should not count toward the 25 percent limit, because the statute applies only the 25 percent limit to project-based vouchers. Other commenters stated that this limitation would impede the preservation of affordable housing and constrain the development of supportive housing units. Two commenters stated that if HUD continues to include "other federal project-based assistance" as counting against the 25 percent cap on assisted units, the rule should make it clear that the term does not include units receiving only mortgage or production subsidies (such as § 236, § 221(d)(3), LIHTCs, or HOME funds).

HUD Response: HUD has considered these comments and adopts them in this

final rule. This final rule limits the number of project-based units in a building to 25 percent of the total units in the building and not to 25 percent of the unassisted units.

Comment: One commenter stated that limiting the size of a multifamily building to no more than a specified number of units is another alternative to the 25 percent cap.

HUD Response: The 25 percent cap is provided for by a clear and unambiguous statute, 42 U.S.C. 1437f(o)(13)(D)(i), and cannot be changed by this rule.

Comment: Two commenters stated that they support the exception to the 25 percent per building cap on project-based units for elderly and disabled families. One commenter stated that “we would encourage HUD to also provide an exception to developments for units that provide families with service-enhanced housing which includes families who were previously homeless.” Another commenter similarly stated that “We suggest including in the list of examples of “excepted units” housing developments created through HUD’s initiatives to provide permanent supportive housing to address the needs of chronically homeless individuals.”

HUD Response: HUD has considered these comments, but has not adopted them. The statute explicitly provides for certain exceptions to the limitation on the number of dwelling units that may be assisted in any one building. The commenters’ suggestion is not included in the statutorily permissible exceptions because inclusion of the type of developments suggested would expand the exceptions allowed under the law. Nonetheless, the final rule expands the definition of supportive services to include services other than those under the FSS program.

Comment: Two commenters stated that if HUD follows the recommendation to expand the definition of “supportive services” that qualify for the exception to the 25 percent cap on project-based units in a building, the rule should make it clear that when an owner has entered into a contract with a public agency other than a PHA to provide supportive services, it is that public agency which has the primary responsibility for monitoring the delivery of those services. As with the competition for project-based vouchers in § 983.51(b)(2), the rule should permit PHAs to rely on the established selection procedures and monitoring expertise of other agencies.

HUD Response: HUD has considered this comment, but is not adopting it. Under the Project-Based Voucher

program, HUD’s contractual relationship is with public housing agencies. The Department can neither impose nor enforce requirements on entities with which the Department has no legally enforceable agreement.

Comment: One commenter suggested that the rule add additional language to three sections. The additions are as follows:

A new § 983.56(b)(4): “(4) Monitoring of supportive services. (i) The PHA may determine that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) suffice to establish the units as “excepted units” for purposes of this section.

“(ii) Where the owner has not entered into contracts with public agencies to deliver supportive services or where the PHA has reasonably determined that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) do not suffice to establish units as ‘excepted units’ for purposes of § 983.56(b)(2)(B), the PHA may require the owner to submit such documentation as is reasonably required to establish the units as excepted units for purposes of this section.”

New §§ 983.283(d)(i) and (ii), to be added at the end (before the semicolon) of § 983.203(d): “including (i) the public agencies other than the PHA, if any, with whom the owner and/or its affiliates and/or its subcontractors intends to contract to provide funding for or direct supportive services for any units receiving PBV assistance; and (ii) a description of the monitoring and reporting requirements regarding the delivery and efficacy of the supportive services under any contracts identified under (i).”

The following, to be added at the end (before the period) of § 983.209(b): “* * * and the owner and/or its affiliates and/or its subcontractors are in compliance with any existing contracts with public agencies to provide funding for or direct supportive services for any units receiving PBV assistance.”

HUD Response: HUD has considered these comments and has determined that, because of the variety of local circumstances and supportive services that may be provided, it is preferable for PHAs, which know the local area and the needs of residents, to administer the details of this aspect of the statute and regulations.

Comment: The site selection standards in proposed § 983.57 would require that project-based assistance “be consistent with the goal of expanding housing opportunities” and that projects using PBV be sited to “promote greater

choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.” One commenter stated that this standard would prevent affordable housing from being developed in areas previously dominated by urban blight, thus attracting residents. Properties outside areas with a high concentration of low-income persons are mostly unaffordable or unwilling to accept government subsidy. Conversely, another commenter stated an objection to the proposed rule’s elimination of any standard for deconcentration and expansion of housing and economic opportunity, and suggested that HUD adopt an alternative standard, based on waiver requests, that allows PBV units in mixed-income projects and neighborhoods undergoing “gentrification” while ensuring that the PHA also creates PBV units in non-poor neighborhoods. Another commenter stated that the rule should allow projects to be sited in areas of poverty concentration where it would allow access to supportive services. “It is the supportive services that will ultimately help lift a family out of poverty rather than the location of the housing outside an area of concentrated poverty.”

HUD Response: The requirement that project-based voucher contracts be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities is a clear statutory mandate and, therefore, cannot be changed as suggested by these commenters. In addition, these are factors under SEMAP scoring. This final rule provides guidelines that PHAs must consider in selecting project-based voucher proposals to ensure that, in selecting projects under the program, the statutory goal of deconcentrating poverty and expanding housing and economic opportunities is satisfied.

Comment: Two commenters questioned whether the site and neighborhood standards in proposed § 983.57(d) should apply to the PBV program. Four commenters stated that some of the site and neighborhood standards do not seem meant to apply to existing buildings. One commenter stated that the PHA should determine whether in the context of its affordable housing goals it makes sense to provide PBVs to the project. Also, the rule should be clearer on whether the PHA or HUD makes the determination that site and neighborhood standards are met. Two commenters stated that the PHA should make the determination. One commenter stated that the proposed rule is unclear about the process for satisfying site and neighborhood

standards, and that units may be lost because landlords in low poverty areas will not wait to rent their units on the private market while a review process is underway.

HUD Response: HUD has considered the comments, but does not adopt them. The standard for existing housing is reasonable and not as stringent as the standard for New Construction. The requirements of proposed § 983.57(d) (§ 983.58(d) of this final rule) are applicable to existing housing under the PBV program. The rule details the requirements that must be considered in determining whether site and neighborhood standards are satisfied.

Comment: Several commenters questioned proposed § 983.58 on environmental reviews. Commenters stated that environmental review requirements should not apply to existing units because actions such as demolition, rehabilitation, and construction are not taking place. A commenter stated that properties for which an environmental review was previously done under another program should be exempt from environmental reviews in the PBV program. Another commenter stated that the section is overbroad as drafted, because it appears to prohibit PBV contracts being executed with owners who have purchased properties prior to HUD completing its environmental review. A commenter stated that where a PBV contract is for existing units and will have an initial HAP term of 5 years or less, parts 50 and 58 should not apply. A commenter stated that “to apply these requirements to existing public accommodations will make it even more difficult for landlords in strong markets to participate in the Special Mobility Program * * *.” Moreover, the delays in waiting for approvals will result in lost units.

HUD Response: Existing housing as used in the PBV regulation is normally categorically excluded from the requirements for an environmental assessment and finding of no significant impact under the National Environmental Policy Act (NEPA). However, existing housing is subject to the applicable federal environmental laws and authorities listed at 24 CFR 58.5.

The responsible entity will conduct the environmental review in accordance with 24 CFR part 58 (or HUD will complete an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review). In the case of existing housing that is reviewed under part 58, the responsible entity must determine whether or not PBV assistance is

categorically excluded from review under NEPA and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

Assistance to a project previously approved under another HUD program for which an environmental review was completed under 24 CFR part 58 is considered supplemental assistance and is categorically excluded and not subject to further review under the related laws in 24 CFR 58.5, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR 58.47. This exemption is limited to contracts for the same units that previously had an environmental review completed under part 58.

In accordance with the NEPA and the Council on Environmental Quality’s implementing regulations, the Department does place limitations on actions before completion of the environmental review. The final rule is clear at § 983.58(d) that the PHA may not enter an Agreement or a HAP contract with an 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 part 983, until an environmental review is complete. However, there is no intent to prohibit an owner from acquiring a property before the owner enters the PHA’s property selection process under the PBV program.

Comment: A commenter stated that in proposed § 983.59 and elsewhere, there are provisions regarding the selection of PHA-owned units that are problematic, because the rule establishes up-front procedural hurdles that could be addressed in a less burdensome way by monitoring PHA performance. For example, initial rents must be based on an appraisal by a licensed and certified appraiser. Also, HUD has to approve in advance an independent entity that will perform rent reasonableness and housing quality standards (HQS) determinations. Another commenter stated that the PHA should be allowed to attach PBVs to PHA-owned units without a request for proposals or review by another entity. Similarly, a commenter stated it supported removing the requirement for independent appraisal of PHA-owned units, and stated that PHAs should have the option of allowing an owner to submit an independent appraisal of the requested rents as part of the project selection process.

Similarly, a commenter stated that “in a variety of ways, the proposed rule makes it extremely difficult for PHAs to expand the supply of publicly-owned affordable housing through use of project-based vouchers.” This commenter cites language primarily from the proposed § 983.59, as well as from proposed language concerning the competitive selection of units. A commenter stated that “* * * the best way to protect tenants and the public is not through front-end procedural barriers * * * but rather through subsequent monitoring of the outcomes. PHAs * * * should be trusted to comply with the law unless they are shown to have violated the trust.” This commenter suggested changes to §§ 983.51(e) and 983.59. The change to 983.51(e) would exempt units owned by the PHA from the review of the selection process, and would provide that the “selection of PHA-owned units will be deemed approved by the HUD field office if the field office fails to act within 30 days of receipt of the required information concerning the selection process.” The changes to § 983.59 would be to permit agencies of local government (in cases where the PHA is not part of the local government) to determine rent reasonableness and HQS compliance without HUD approval, and to permit PHAs to select an independent entity other than a unit of local government to perform the same function, also without HUD approval.

HUD Response: HUD has considered these comments, but does not adopt them. The proposed regulation governing PHA-owned units is not intended to reject the use of performance standards nor to impose a more administratively burdensome process than necessary, but rather to protect, to the extent possible, taxpayer dollars by ensuring that such dollars are appropriated fairly and without undue influence and favoritism. It should also be noted that the law requires that an independent agency inspect units and determine the reasonableness of rents in the case of PHA-owned housing under the tenant-based program. The law establishes these same requirements for the project-based component of the voucher program.

Subpart C (§§ 983.101–983.103)

Comment: Proposed § 983.101 requires units to comply with HQS and lead-based paint regulations at 24 CFR part 35. A commenter stated, as to proposed § 983.101(c), that lead paint requirements at 24 CFR part 35, particularly at 24 CFR 35.720(c) and 35.730, which involve reporting by local health officials, could be problematic in

the PBV program. This commenter stated that the rule should be revised to require PHAs to give the local health department the addresses of all PBV units, and to require the PHA to notify each unit owner of their obligations. Also, unit owners need to be informed of their obligation to verify with the health department when they learn the information (about elevated lead levels) from a source other than local health officials.

HUD Response: These comments relate to matters beyond the scope of this rulemaking. Since the proposed rule did not involve the lead paint regulations, those regulations were not made available for public comment. A separate public rulemaking procedure would be required to address lead paint issues.

Comment: One commenter stated that HUD needs to define what qualifies as a unit generally complying with HQS. Two commenters stated that instead of requiring PHAs to inspect all units for HQS compliance prior to unit selection and again prior to HAP execution, the rule should give PHAs discretion to do only one inspection. One commenter also stated that if a project has a Real Estate Assessment Center (REAC) score higher than 60, it should not be necessary to do an inspection after each turnover. One commenter stated that it is unclear what steps a PHA must take to ensure that existing units comply with § 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. One commenter stated that the requirement for inspection of a sample of units at least annually seems to conflict with the SEMAP requirement of inspecting each unit under contract at least annually.

HUD Response: HUD disagrees with the comments relating to a definition of general compliance with HQS, and with the comment relating to Public Housing Assessment System (PHAS) scores. Only in the case of selecting existing units, and for the purpose of defining them as existing units, must the PHA ensure that all of the units substantially comply with HQS. HUD has elected not to define what qualifies as a unit substantially complying with HQS since the units must comply fully with HQS prior to HAP execution. The law also requires that units be inspected for compliance with HQS, regardless of PHAS score. Furthermore, compliance of existing units under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act is defined in 24 CFR Section 8 subpart C. HUD agrees with the comment regarding SEMAP. SEMAP scoring for inspections will be adjusted to remove all PBV units as reflected in the Public Housing Information Center

(PIC) from the annual inspection indicator.

Comment: Proposed § 983.103(d) requires an annual inspection of a random sample of 20 percent of all PBV units in each building of a project. Some commenters stated that inspections should be of a random sample of units in a project, rather than units in a building. One commenter stated that the section should be revised to require inspection of at least two units or 20 percent of the units, whichever is more. Alternatively, this section should restrict the random sample method to multifamily buildings. An inspection of only one unit in a small building does not provide enough of a sample. One commenter supported this section as proposed.

HUD Response: HUD considered the comments regarding random inspections of a project rather than a building, but is not adopting them. The statute requires annual compliance with inspection requirements except that the agency shall not be required to make annual inspections of each assisted unit in the development. HUD believes that the sample should be drawn on a building basis in order to get a good cross-section of the condition of the units in a project. HUD has interpreted the law by requiring at least 20 percent of the units in a building be inspected annually. A development or project could consist of several buildings and a random sample of the project or development would not necessarily ensure an inspection in each building. In response to the issue of sample size, HUD believes that the inspection of at least one unit in buildings where five or fewer PBV units are located is, due to the small number of units involved, an adequate sample.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units (§§ 983.151–983.156)

Comment: Proposed § 983.152(c)(1)(ii) requires that the location of contract units be described in the agreement to enter into a HAP contract. One commenter stated that because units can float, it seeks confirmation that this provision requires identification of the building, not the exact unit.

HUD Response: The “location of the contract units on site” does refer to the location of the contract units in a building in which PBV units will be located and must be described in the HAP contract. Floating units are addressed in § 983.206.

Comment: Proposed §§ 983.153(a) and 983.55 require a subsidy layering review prior to execution of the Agreement by the owner and the PHA. Commenters

stated that subsidy layering analysis should be done prior to the Agreement only when some kind of governmental assistance is being provided to the project. “For instance, we do not think subsidy layering would apply where a PHA chose to use PBVs in a project that already has an FHA insured mortgage” and no new assistance. A commenter stated that subsidy layering requirements should be clarified and explained with a “clear road map” so as not to “chill” PHAs and developers.

HUD Response: The Final Rule retains the requirement for subsidy layering reviews because it is statutory. Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (codified at 42 U.S.C. 3545) requires that the Secretary certify that “assistance within the jurisdiction of the Department” to any housing project shall not be more than is necessary to provide affordable housing after taking into account “other government assistance.”

Comment: Proposed § 983.154(b)(3) requires the owner and the owner’s contractors and subcontractors to comply with applicable federal labor standards, and requires the PHA to monitor that compliance. One commenter stated that the rule should allow PHAs to work with other agencies that have an interest in the project to monitor compliance with the Davis-Bacon Act.

HUD Response: HUD considered this comment but did not adopt it because, although a PHA can subcontract any of its functions, the PHA is still ultimately responsible for monitoring to ensure that the owner and owner’s contractors and subcontractors comply with applicable federal labor standards (see HUD handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs).

Comment: Two commenters stated that the conflict-of-interest provision in § 983.154(e) is too vague and needs additional definition.

HUD Response: The provisions of 24 CFR Section 982 subpart D apply to the project-based voucher program in accordance with Section 983.2(a). Specifically, Section 982.161 details conflict of interest provisions.

Comment: Proposed § 983.155(a) states that the Agreement must state the completion deadline and that the owner must provide evidence of completion. Three commenters stated that the completion deadline should be between the owner and PHA, not HUD. If the project is not completed, the owner will not get the PBVs. HUD should leave the completion determinations to the PHA.

HUD Response: HUD agrees with commenters that the completion deadline should be arranged between the owner and the PHA. Although HUD may specify additional documentation that must be submitted by the owner to evidence completion of the housing, the additional documentation must be submitted to the PHA, not to HUD.

Subpart E—Housing Assistance Payments Contract (§§ 983.201–983.209)

Comment: One commenter stated that in the Special Mobility Program, landlords commit to a number of Section 8 units, but they may not know which specific units will be available. The requirement in proposed § 983.203(c) to identify the location of each contract unit may be difficult to meet. This commenter stated that the rule should be modified to allow HQS inspection and HAP amendment to occur as units become available, with adjustments to lease terms as needed.

HUD Response: The regulation as proposed resolves this issue, since it allows floating units. In § 983.206(a), at the discretion of the PHA, 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. HQS and rent reasonableness must be determined for the new units. Section 983.206(b), allows for amendment of the contract within 3 years of initial execution to add additional units in a building. Leases and HAP contracts do not run concurrently as in the tenant-based program.

Comment: A number of commenters disagreed with the provision for one-year extensions of HAP contracts in proposed § 983.205(b). These commenters stated that the length of extensions should be up to the PHA, and should be for up to the length of the initial term. Commenters stated that the statute allows longer extensions, and that the one-year limitation violates the statute. One commenter suggested that § 983.205(b) should be revised as follows:

In the initial contract, the PHA and owner may agree that, subject to appropriations, they will extend the term of the HAP contract prior to its expiration for a duration agreed upon by the parties if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families and the owner has complied with the contract during the initial term. Subsequent extensions are subject to the same limitations.

Two commenters stated that annual extensions are too administratively burdensome. One commenter also stated

that contractors need an assurance of a longer term. Some commenters stated that one-year extensions could impede the ability of owners to obtain financing, and that the minimum extension should be five years. One commenter stated that the limitation increases the risk to investors who are risk-averse. Three commenters stated that the limitation may also interfere with using LIHTCs. One commenter also suggested that § 983.305(b) be revised to be extendable “for up to an additional 10 years.”

One commenter stated that (as of the time of the comment) annual contributions contracts (ACCs) are only being extended for 3 months. This places the PHA in an awkward position to enter even into a one-year HAP with an owner.

HUD Response: HUD has considered all of the comments and agrees that renewal terms should be more than one year. Accordingly, PHAs will be allowed to approve extensions after the initial term on a five-year or shorter basis as determined by the PHA.

Comment: Proposed § 983.205(d) allows the owner to terminate a contract if the rent falls below the initial rent. In this case, families are given tenant-based assistance. A number of commenters disagreed with this provision.

Five commenters stated that instead of allowing the owner to terminate the contract if rent falls below initial rent, as provided in proposed § 983.205(d), the rule should not allow PHAs to reduce rents below initial rents. Two of these commenters stated also that the proposed rule is contrary to the statutory provision on rent adjustment and will discourage participation in the program. The statute delegates the determination of rent to PHA and owner, outside of HUD’s rulemaking power. Two commenters stated that the initial guidance provided by HUD requires rent adjustments only at the request of owner, and that an arbitrary reduction in rent based on a change in payment standard can create financial stress for the property. One commenter stated that the rule should clarify whether, if the HAP contract is terminated under § 983.205(d), the tenants are eligible to receive enhanced or regular vouchers. Two commenters stated that although the rule protects tenants if rents are reduced and the owner opts out, it may endanger the project because converting the assistance to tenant-based removes a unit and would limit the units available for the intended population and threaten the viability of the project. The rule should remove disincentives for the owner to participate and protect funders

by modifying § 983.301(a)(3) to provide that rents are redetermined at the request of the owner, and deleting §§ 983.205(d) and 983.302(c).

HUD Response: HUD has considered all of the comments and has addressed changes to rent adjustments in § 983.302. However, HUD believes that the law is very specific for setting rents and that HUD lacks the ability to limit rent reductions. Should the owner terminate the HAP contract in accordance with § 983.205(d), families are eligible to receive the same regular (not enhanced) tenant-based vouchers for which they are eligible, at their request, after living in a project-based unit for 12 months.

Comment: One commenter stated that the proposed rule provides that units do not float. PBV units should be permitted to float within a building or development so long as the PHA meets HUD requirements. This commenter suggests new language for 983.206(a):

At the discretion of the PHA and subject to all PBV requirements, the HAP contract may permit PBV units to float within a building or development. The owner must maintain the same number of units and the same number of bedrooms. Prior to attaching PBV subsidy to a unit within a building or development, all PBV requirements must be met, including an inspection confirming that the unit meets HQS standards and a rent reasonableness determination.

One commenter supported a provision to amend the HAP contract by allowing units to “float.” It should be made clear that this should only be done at turnover or where families lose assistance due to being over income to prevent displacement, and there should be safeguards against replacement of accessible units with non-accessible ones. One commenter stated that the rule should not require HAP contract amendments when, because of administrative burden, units are added or substituted. Another commenter stated that allowing units to be substituted “is a great enhancement.” However, the commenter stated that the restriction of substitutions to 3 years after HAP execution (§ 983.206(b)) should be removed, to allow the PHA to help an additional family in cases where the assistance drops to zero but the family prefers to stay in the unit and pay market rent.

HUD Response: HUD believes the flexibility sought by the commenters already exists and therefore is not adopting the proposed change to § 983.206(a). In § 983.206(a), at the discretion of the PHA, 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. Further restrictions regarding “floating” units is not necessary since substituting units must be in compliance with all PBV requirements. HUD believes that units cannot be assisted without a contractual agreement obligating the assistance necessitating a revision to the HAP contract. Section 983.206(a) does not restrict the substitution of units to three years. The three-year limit applies only to adding new units to the original PBV contract.

Comment: Proposed § 983.206(c) states that 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. Five commenters stated that in order to protect against displacement and transition to lower-income families over time, HUD should change its position that there is a single anniversary date for all units under HAP contract within the full term of the contract. One of these commenters stated that some proposals may require a complex transition of units into the program over time. The PHA and owner should be able to structure the admission requirements in the PHA’s administrative plan in a manner to best serve both current residents and those on the PHA waiting list.

HUD Response: HUD does not accept that in order to protect against displacement and transition to lower-income families over time, HUD must change its position on a single anniversary date for all units under one HAP contract. The commenter did not elaborate on how the same anniversary date for all units under the same contract would displace and transition lower-income families. Once units are accepted into the program, they are placed under a HAP contract. Eligible current residents are given priority for admission in accordance with 983.251(b).

Comment: Proposed § 983.209 requires the owner to certify to certain matters. Three commenters stated that the owner may not be able to certify that each unit receiving assistance is occupied by a family referred by the PHA because some families receiving assistance due to displacement provisions will not have been referred by the PHA.

HUD Response: In response to these comments, HUD will clarify that only families referred by the PHA may be assisted. Section 983.251(b) protects in-place families by providing a priority for admission to the PBV program. However, these families must also be

determined eligible by the PHA and referred to the owner by the PHA.

Comment: One commenter stated that the prohibition on renting to the owner’s relatives in proposed § 983.209(e) should be subject to an exception when necessary to make a reasonable accommodation, as in current 24 CFR 982.306(d).

HUD Response: The comment was not adopted. HUD intentionally differentiates in this case between the tenant-based voucher and project-based voucher programs. To allow an owner of a project-based voucher development to rent to close family relatives (whether disabled or not) creates a systematic incentive to owners to misuse the program. Persons requesting a reasonable accommodation in policies in order to effectively participate in the housing choice voucher program are not harmed by restricting the exception to renting to relatives to the tenant-based program.

Subpart F—Occupancy (§§ 983.251–983.261)

Comment: Proposed § 983.251 regulates how families are selected for the PBV program. Commenters stated that the PHA and the owner should be able to structure the admission requirements to best serve both current residents and those on the waiting list. While generally supporting the anti-displacement provision (§ 983.251(b)(2)), the commenters stated that this provision should be revised in the final rule to allow discretion in providing current families with PBV assistance. A commenter also stated that owners and PHAs should be given the flexibility to lease units on a rolling basis in compliance with the PHA’s waiting list policy. Owners should be able to contract for the maximum number of units needed to accommodate the greatest number of eligible households in a way that can be financially supported over time.

HUD Response: HUD does not agree with these comments. Eligible in-place families should not be penalized if units in the building are selected to receive project-based assistance. However, project-based assistance is limited to 25 percent of the units in a building which means that not all of the eligible families in the building can receive project-based voucher assistance. However, eligible in-place families must be given an absolute preference on the waiting list for units that become available.

Comment: Regarding proposed 983.251(a)(1), one commenter stated that public housing families should have the choice to move to PBV units

without having to put themselves on a separate Section 8 waiting list.

HUD Response: The comment was not accepted because the statute governing the project-based voucher program requires that PHAs select families to receive project-based assistance from its waiting list.

Comment: A number of commenters stated that they support protection for in-place families provided in § 983.251(b). One of these commenters stated that this provision would help prevent families from becoming homeless. Another commenter stated that an eligible family should have a choice between a voucher or relocation benefits. Another commenter stated that eligibility should be determined at the HAP execution stage, so that a family could become eligible during construction, and that HUD should consider making the residency determination at the proposal acceptance stage. Since the units can float, any ineligible units can be switched at the time of execution of the HAP contract. This commenter also stated that HUD should disregard in-place families when assessing a PHA’s compliance with income-targeting requirements since these tenants are already in occupancy and constitute a continuing tenancy. Another commenter stated that it supports the minimizing displacement provision; however, because existing units will now be eligible for PBV, the “inclusion of minimizing displacement should be available to the families of existing units selected for PBV.” Another commenter, while expressing general support, also stated that some in-place families might not be appropriate for the project. For example, the in-place family may be a single individual and the project may be for chronically mentally ill homeless individuals. Another commenter stated that it supports approving existing housing with tenants in place.

Otherwise, the supply of housing would be limited, and issues of preference usually get resolved on turnover. “The benefits outweigh the slowing down of assistance to those on the waiting list.”

HUD Response: The suggestion regarding a choice between a voucher and relocation benefits was not adopted. This is because relocating an in-place family in these circumstances would be inconsistent with HUD’s policy to minimize displacement. An in-place family cannot otherwise be placed ahead of others on a PHA’s waiting list unless a PHA develops such a preference. The comment regarding establishing eligibility at the time of HAP execution would not be consistent with HUD policy to minimize

displacement and protect in-place tenants. Providing such protection is appropriate only when a decision is made to provide PBV assistance. It is for this reason that HUD determined that an in-place family must be eligible on the proposal selection date. The suggestion involving choosing appropriate in-place families cannot be considered because it would be inconsistent with civil rights laws. Specifically, the PHA's administrative plan cannot provide for a selection preference for the program based on a specific disability.

Comment: Two commenters stated that priority for in-place families for assistance needs to be balanced against the needs of the families on the waiting list, and suggests limiting the number of prioritized in-place families to 20 to 30 percent of the total. One commenter advocated "allowing owners some discretion in determining which families are eligible for PBV assistance, consistent with administrative plan and waiting list policies." Another commenter stated that the section clarifying that PHAs must offer assistance to eligible in-place tenants who occupy proposed contract units will facilitate the use of PBVs to preserve existing housing. However, the rule should give PHAs the flexibility, between the time the Agreement and HAP are executed, to substitute new tenants as the in-place tenants. Also, PHAs should be allowed to select units with ineligible tenants and move the tenants to appropriate units. A commenter stated that the PHA should have flexibility to offer tenant-based vouchers to in-place families. Also, the rule should clarify whether in-place families have priority for the program or the particular project they occupy. A commenter stated that from a practical perspective, it will not ordinarily be necessary to use occupied units in partially assisted developments because of turnover. While there may be meritorious cases for using an occupied unit, a PHA could use this provision to steer assistance toward favored sites and tenants.

HUD Response: The suggestion to provide priority for only 20 to 30 percent of in-place families is contrary to HUD policy to minimize displacement. The law requires that PHAs determine eligibility of families under the project-based voucher program and PHA selection of families from the waiting list. The PHA must give in-place families that are eligible for assistance a selection preference to minimize displacement. When such families move out of the PBV unit, the unit will then become available for a waiting list family.

Comment: Proposed § 983.251(c) governs the selection of families from the PBV waiting list. One commenter stated that the rule should allow for preferences for persons with disabilities for units in which disabled individuals will be receiving specialized services if the persons are recognized by Congress as a protected class because of their disabilities. Placing preferences for these recognized classes would minimize the need for waivers. Another commenter stated that HUD, in supportive housing with "wraparound services," should allow PHAs and owners to select the applicants who need the services and allow preferences based on eligibility for services offered at specific complexes. Another commenter stated that "in some circumstances, supportive housing projects that serve people with disabilities that grant preference to applicants who are eligible for the supportive services offered may be entirely appropriate * * *"

HUD Response: HUD agrees with the commenters. HUD is revising this final rule to allow a selection preference for disabled persons in need of the services offered at a particular PBV project.

Comment: Proposed § 983.251(c)(3) provides for project or building-specific waiting lists. Three commenters stated that they support project-specific waiting lists. One commenter stated that it supported selection criteria for individual projects. Two commenters stated that "we applaud the proposed rule's clear statement that a PHA may maintain project-specific waiting lists, a policy that is essential for permanent supportive housing to operate efficiently." Another commenter stated that it supports separate waiting lists for PBV units.

HUD Response: HUD agrees with the commenters. The rule gives PHAs the ability to establish project-specific waiting lists.

Comment: Two commenters objected to the income-targeting provision in proposed § 983.251(c)(6). One stated that the PBV program will create disincentives for PHAs because this section would require that 75 percent of families be extremely low-income. This will result in higher assistance payments and fewer families being served. Another commenter stated that income targeting should be removed entirely. It is not in line with upcoming budget reductions and does not allow PHAs to make decisions on how to spend their funding.

HUD Response: HUD has considered these comments but declines to adopt them for the following reason. Section 8(o)(13)(J) makes the statutory

requirements governing income targeting applicable to the project-based voucher program. The income targeting requirements are program-wide requirements. PHAs need not apply the requirements on a project-by-project basis.

Comment: Commenters stated that § 983.251(c) should be revised to allow for preferences based on eligibility for supportive services being offered, while at the same time preserving, for persons with disabilities, the principle that participation in supportive services is voluntary. Two commenters agreed with preferences based on eligibility for supportive services and stated that the civil rights concepts embodied in Section 504 and part 982 regulations should be preserved in this rule.

These commenters recommended an additional paragraph be added to proposed § 983.251(c) providing that "in appropriate circumstances to be determined by the PHA in its PHA plan * * * the PHA may adopt preferences on its project-specific lists for families who are eligible for the services to be offered in conjunction with an individual project, building, or set of units. However, the owner must permit occupancy by any qualified person with a disability who could benefit from the housing or services provided, regardless of the person's disability."

HUD Response: HUD agrees. The final rule allows a selection preference for disabled persons in need of the services offered at the PBV project.

Comment: Proposed § 983.251(c)(5) provides that "the PHA may place families referred by the PBV owner on its PBV waiting list." One commenter stated that this section should clarify that the PHA may not provide owner-referred families with any admission rights not enjoyed by other families. Otherwise, the owners would become the gatekeepers for the PBV program. This, the commenter argued, would be inappropriate. Another commenter stated that this section and proposed § 981.251(c)(3) (providing for separate project or building waiting lists) essentially negate (c)(1) (providing for selection from the PHA waiting list), and allow landlords to make referrals to a site-based list that can have its own preferences. This appears inconsistent with the statute and would allow individuals referred by the landlord to jump over the community-wide waiting list. Unlike public housing, there is no provision for civil rights monitoring of these lists. This commenter recommended certain revisions:

In proposed § 983.251(c)(3), strike the last sentence reading, "In either case, the waiting list may establish criteria or

preferences for occupancy of particular units.”

Revise proposed § 983.251(c)(5) to read, “Subject to its waiting list policies and selection preferences specified in the PHA administrative plan, the PHA may place families referred by the PBV owner on its PBV waiting list.”

HUD Response: HUD has considered these comments and believes that the commenters misunderstood HUD’s intent. The PHA must administer its waiting list in accordance with its administrative plan that governs admission policies. The PHA may establish preferences for selecting families from its waiting list. The law governing the PBV program requires that families be selected from the PHA’s waiting list and allows the PHA to place on its waiting list families referred by an owner. The statute further provides that a PHA may maintain a separate waiting list for a particular project.

Comment: Proposed § 983.251(c)(7) provides that in selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer to the owner those families that require such features (see 24 CFR 8.26 and 100.202). A commenter stated that this section should also include material regarding the owner’s duties in connection with families that require accessibility features.

HUD Response: This commenter’s suggestion was not adopted since a requirement to provide materials regarding owner’s duties in connection with families that require accessibility features is beyond the scope of this rulemaking.

Comment: A commenter stated that the waiting list system should allow owner referrals during times of under-utilization and PHA referrals to owners during times of over-utilization. Another commenter stated that the rule should remove the requirement to use the PHA’s waiting list when the project serves homeless or special needs populations, as such populations are not well-served by using PHA waiting lists.

HUD Response: The rule retains the proposed rule language. The statute requires that the PHA maintain waiting lists for project-based units. However, the PHA may use separate waiting lists for PBV units in individual projects or buildings or may use a single waiting list for the PHA’s whole PBV program. PHAs may also give a selection preference for homeless individuals and homeless families.

Comment: Commenters stated that there is nothing in the rule to cover tenants who become over-income. This commenter states that there should be a

6-month grace period as in the tenant-based program, citing § 982.455 (which provides that the HAP contract terminates 180 days after the last housing assistance payment to the owner). Income changes may be temporary, or the family could relocate to a unit with higher gross rent for which they are eligible. One commenter states that a sentence should be added to proposed § 983.259 that reads “if a family is over-income, subsidy shall be suspended for six months.”

HUD Response: HUD disagrees that there should be a 6-month grace period for families that no longer require housing assistance in a PBV unit. The provisions of Section 982.455 do not apply to the PBV program. If a unit is occupied by a family for which housing assistance is no longer required, the PHA has the option of removing this unit from the HAP contract or substituting the unit with a comparable unit in the building for occupancy by another eligible family in need rather than hold off on the use of the assistance for six months.

Comment: Proposed § 983.254(b) provides that if any contract units have been vacant for a period of 120 or more days since owner notice of vacancy, 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 a period. One commenter stated that HUD should clarify that this reduction is not the same as termination of the HAP, but merely an adjustment to the payment. In addition, HUD should make clear that the PHA would still have the duty to fully utilize its Section 8 funding in some manner, such as in the tenant-based program. The commenter based this argument on 42 U.S.C. 1439(a) and 42 U.S.C. 1437f(o)(K). One commenter stated that it should be more clearly stated that the PHA may not reduce the units under HAP contract if the units have been vacant 120 days or more due to the PHA’s failure to refer a sufficient number of families to owner.

HUD Response: HUD has considered the comment, but is not adopting it for the following reasons. HUD believes that the regulation is clear upon scrutiny. A reduction in the number of units under the PBV HAP contract is not synonymous with termination of the HAP contract. Funding utilization is the responsibility of the PHA regardless of whether the vouchers are project-based or tenant-based. Since the owner can refer families to the PHA’s waiting list for PBV, HUD disagrees that units should not be removed from the HAP

contract if the units have been vacant 120 days or more due to the PHA’s failure to refer a sufficient number of families to the owner. Additionally, subject to a PHA’s policy on vacancy payments, an owner is not receiving subsidy on units that remain unoccupied and the PHA can remove such units from the HAP contract.

Comment: Proposed § 983.256(c)(3) states that the lease must state “the term of the lease (initial term and any provision for renewal).” One commenter stated that this section should be revised to require a renewal provision in the lease or tenancy addendum.

HUD Response: The lease used in the PBV program is comparable to lease requirements in the tenant-based program. HUD does not require specific renewal provisions in the lease or tenancy addendum since this is a matter of local rental practice and is up to the owner.

Comment: Proposed § 983.257 states that “Section 982.310 of this chapter applies with the exception that § 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 personal, family, or a non-residential rental purpose.)” Two commenters stated that “we do not understand why in the PBV program it would not be good cause to terminate a tenancy for business or economic reasons similar to the voucher program.”

HUD Response: In the tenant-based program, each HAP contract is for a specific unit. In the project-based program, most HAP contracts will be for more than one unit. Since HAP contracts under the PBV program will be for multiple units, the owner cannot claim a business or economic reason to terminate a tenancy since the unit is obligated, under any HAP contract, to be an assisted unit for the term of the contract. The regulation provides, however, that if the owner terminates a lease without good cause, the unit must be removed from the housing assistance payments contract.

Comment: Two commenters stated that HUD should use 24 CFR part 247 (which applies to section 221(d)(3) and (d)(5) below market interest rate projects; projects under section 236 of the National Housing Act; and projects under section 202 of the Housing Act of 1959) as the rule for termination. Part 247 requires good cause for termination, and the proposed section does not. Under the proposal, an owner can in effect capriciously remove a tenant from the PBV program and force the tenant into the tenant-based program. One

commenter also stated that as an alternative, if HUD does not adopt the standard in 24 CFR part 247, HUD should add a clause in § 983.256 of this final rule that would require owners to offer lease renewal unless they have good cause to do otherwise. One commenter also stated that good cause should be required for termination of tenancy.

HUD Response: The final rule clarifies provisions on lease termination in response to comments. As a general matter, 24 CFR 982.310 (other than paragraphs (d)(1)(iii) and (iv)) applies and describes the events that constitute good cause for lease termination. Final § 983.257(b) describes the owner's options upon lease expiration: To renew the lease; refuse to renew for "good cause" as defined; or refuse to renew without good cause, in which case the PHA would provide the family with a tenant-based voucher and remove the unit from the HAP contract. In this latter case, the unit would be removed from the PBV HAP contract. HUD believes that these changes clarify the issue.

Comment: Proposed § 983.259 provides that if the PHA determines that a family is occupying a wrong-size unit, the PHA must offer the family the opportunity to receive continued housing assistance in another unit. This assistance may be in the form of another Section 8 project-based unit, tenant-based voucher assistance, or other comparable project-based or tenant-based assistance.

Two commenters stated that wrong-size unit termination provision is unfair to the project when the fault is with the family and not the owner. The owner should be able to evict the family under these circumstances. The same should apply when the PHA offers the family other comparable assistance and the family fails to act on the offer.

Referring to relocation from a wrong-size unit, a commenter stated that tenants should have more choice of the replacement assistance to be provided and the right to reject a unit for good cause, and that the rule should require the PHA to offer an appropriately sized affordable unit. Also, if an appropriate alternate unit is identified, the tenant should have an opportunity to reject the unit for good cause. This commenter asks that current § 983.205(b), which provides many of these features, be retained in this rule.

HUD Response: HUD considered but did not adopt these comments for the following reasons. Although the owner may evict a family in accordance with the lease, the PHA must terminate assistance for any unit occupied by an ineligible family once sufficient time is

provided on a tenant-based voucher, or another form of comparable assistance is offered to the family and then refused. HUD disagrees that a family should have the right to reject the offer of another PBV or comparable unit for cause, as that would prolong the time until the unit could be made available to another needy family. However, the regulation in Section 983.259(c)(2) does not preclude the PHA from establishing a policy on unit offers when offering another form of continued housing assistance.

Comment: Proposed § 983.260 gives the family a right to move with tenant-based assistance after one year in the project-based unit. One commenter stated that the occupancy period before the option to move should be extended to two years, because many project-based programs have a supportive services option that goes beyond one year. In addition, other project-based units should be given as a moving option. Finally, the rule should include tenant protection so that tenants don't pay more rent than they would in the voucher program. Another commenter stated that this provision should be changed in the case of transitional supportive housing so that the tenant is encouraged to complete the tenant's services plan before moving. Also, the PHA should be able to substitute other comparable housing. Another commenter stated that it supported the option to move after 12 months, however, there should be stronger language requiring owners to fulfill their PBV commitments before issuing vouchers to families that wish to move, and the PHA must have sufficient funding to fill the vacated unit. One commenter stated that it supports the ability of a family to leave with a tenant-based voucher because it will be an incentive to participate in transitional housing programs.

HUD Response: The right of tenants to move after one year is statutory and cannot be revised in the manner suggested. Transitional housing is not a factor because, as noted above, transitional housing often has requirements incompatible with this aspect of the PBV program, and hence is not eligible for assistance under this program.

Comment: Three commenters stated that the provision allowing families to move after 12 months should be eliminated. It will complicate waiting lists, contradict PHA preferences, and restrict capacity for assistance. Owners may be reluctant to participate knowing they could lose their tenants in a year, and families could circumvent the tenant-based waiting list. It adversely

impacts the PHA and allows applicants to jump the waiting list.

HUD Response: Tenant mobility after 12 months is a statutory requirement and cannot be eliminated. However, when the family moves out of a unit with project-based assistance, the PHA is required to refer other families to the owner to be selected to occupy vacated units.

Comment: Proposed § 983.260(a) would have provided that "if the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance." A commenter stated that there should be good cause exceptions allowing family to move within the first year.

HUD Response: The comment is not adopted. The statute provides only for continued assistance under the tenant-based voucher program or other comparable assistance after the family has occupied the dwelling unit under a PBV HAP contract for 12 months. This final rule places this statement in a new § 983.260(d).

Comment: Commenters stated that, to follow § 504 and HUD's ADA regulations and avoid unnecessary concentration and isolation of persons with disabilities, the rule should adopt project size limits for persons with disabilities similar to the 811 program Notice of Funding Availability (NOFA). These commenters suggested a new § 983.263 be added setting size limits for buildings serving disabled persons. Independent living projects would be capped at 24 PBV units serving persons with disabilities. Group homes serving persons with disabilities would be capped at six PBV units. The language would also include criteria for the HUD field office to grant exceptions to these limits.

HUD Response: HUD disagrees with comments that would unduly restrict the PBV program by limiting the size of buildings or group homes occupied by persons with disabilities.

Comment: Proposed § 983.261(c) provides that 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 must vacate the unit within a reasonable period of time established by the PHA. Four commenters stated that the rule should also state that a family in an excepted unit (that is, a unit excepted from the 25 percent cap on project basing) not in compliance with its FSS obligations can be evicted.

HUD Response: The law requires that excepted units must be made available to families that receive services. If the

family no longer qualifies for the excepted unit because it is in non-compliance with its obligations to receive supportive services, the PHA may terminate assistance on that basis. (See final § 983.261(c)). If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. (See final § 983.261(d)).

Subpart G—Rent to Owner (§§ 983.301–983.305)

Comment: A commenter stated that “we do not favor the proposed rent limits,” that is, the higher of 110 percent FMR or the HUD-approved exception rent. These limits are too restrictive, and will limit project basing to the lower end of the market and interfere with income mixing. Another commenter agreed and stated that while there are sharp reductions in payment standards due to budgetary concerns, FMRs are not falling. The program will not attract quality developers and favorable financing. Two commenters stated that the statute allows for a different payment standard, as well as a higher payment standard, as long as the rent reasonableness test is met. Two other commenters stated that they object to § 983.301(b)(1) as unjustifiably eliminating flexibility to use a higher range of payment standard in particular cases. Such a rule will reduce the willingness of landlords to enter the program and thus have the opposite effect of encouraging PHAs to set higher payment standards across the board, potentially increasing overall costs. One of these commenters stated that §§ 983.205(d) and 983.302(c) should be deleted, and §§ 983.301(a)(3) and 983.301(b) should be revised to read as follows (new material is in *italics*):

§ 983.301(a)(3): The rent to owner is redetermined *at the request of the owner and not more frequently than the annual contract anniversary* in accordance with this section and § 983.302.

§ 983.301(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) *110 percent of the fair market rent* for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner; *except that the rent to owner never is required to be less than the initial approved rent to owner.*

Another commenter also stated that the rents should be required to be redetermined only at the request of the owner and that the requirement to annually redetermine rent be removed.

HUD Response: The final rule provides that the rent to owner may be established in accordance with the statutory maximum. Thus, the final rule provides at Section 983.301(b):

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

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

(2) The reasonable rent; or

(3) The rent requested by the owner.

Comment: One commenter stated that the rent provisions take away the PHA’s flexibility to set rents by limiting the rents to the existing tenant-based payment standard. By statute, PHAs have authority to raise the rent to the higher of 110 percent of FMR or the PHA’s payment standard. Two commenters stated that in economically robust areas the maximum rent of 110 percent of FMR is more appropriate, and rent reasonableness checks will keep a PHA from overpaying. Three other commenters made similar comments.

HUD Response: The commenters’ concerns have been addressed in the HUD response immediately above.

Comment: One commenter stated that proposed § 983.301(a)(3) should be rewritten to state: “The rent to owner is determined at the request of the owner and not more frequently than the annual contract anniversary in accordance with this section and § 983.302.”

HUD Response: The final rule addresses the commenter’s concern. It provides that the rent to owner shall be redetermined when the owner requests an increase in the rent to owner at the annual anniversary of the HAP contract or when there is a 5 percent decrease in the published FMR.

Comment: Two commenters stated that limiting rents to the PHA payment standard means that if the payment standard is reduced, rents must be reduced. This provision of the rule seems contrary to the statutory provision on rent adjustments (8)(o)(13)(I). If this provision remains it would likely discourage owner willingness to accept PBV contracts. In addition, lack of rent stability would

make it hard to leverage additional financing.

A number of commenters stated that § 983.301(b) should state that the PHA may establish a separate payment standard for a PBV project.

HUD Response: HUD agrees and is adopting an FMR-based standard as described in the above responses.

Comment: Proposed § 983.301(c) provides for a different rent-to-owner calculation for certain LIHTC units. Three commenters stated that the higher rent for LIHTC units appears to apply only when there are LIHTC units not receiving PBV assistance. This appears to prohibit the higher tax credit rent for buildings that are 100 percent PBV. These commenters stated that for projects for the elderly, persons with disabilities, and families receiving supportive services, HUD should determine what the maximum tax credit rent would be and set the rent accordingly. One commenter stated that the rule runs counter to the Department’s existing treatment of Section 8 assistance in conjunction with LIHTCs. As currently proposed, the rule would lead to concentration in qualified census tracts. Low-income families need services and those services must be supported by project rents. This commenter recommends that HUD adhere to its existing treatment of Section 8 assistance with LIHTCs in PIH notices 2003–32 and 2002–22.

HUD Response: HUD has determined that it is inappropriate to allow owners to collect higher rents from voucher families than they are allowed to collect from tax credit families. HUD has determined that allowing higher rents would result in a duplicative subsidy. Accordingly, LIHTC projects under 24 CFR 983.304(c)(1)(v) will be treated in the same manner as Section 236 and Section 221(d)(3) below-market interest rate (BMIR) projects. HUD believes that the rule text, as drafted, accurately reflects the language of § 8(o)(13)(H) of the 1937 Act (42 U.S.C. 1437f(o)(13)(H)).

Comment: One commenter stated that proposed § 983.301(f)(2) (providing that the PHA may not apply different payment standard and utility allowance amounts in the project-based and tenant-based programs) is inconsistent with the statute.

HUD Response: HUD considered the comment regarding utility allowance schedules, but is not adopting it. The final rule provides that the PHAs may not establish rents under the PBV program that differ from the PHAs’ tenant-based payment standards. The statute governing the PBV program is silent on utility allowance schedules. Utility allowance schedules are

determined based on community rates and average consumption. It is therefore not necessary to establish separate utility allowance schedules for the PBV program.

Comment: Proposed § 983.302 provides for an annual redetermination of the rent to owner prior to the annual anniversary of the HAP contract. A number of commenters stated that § 982.302(c) should be deleted from the rule because it is contrary to statute and would discourage owners, lenders, and investors from program participation. This section states that if the annual redetermination shows that the rent to the owner has decreased, the actual rent to the owner must be decreased regardless of whether the owner has requested an adjustment.

HUD Response: HUD disagrees with the interpretation that the proposed § 983.302(c) is contrary to the statute. HUD believes that any rent adjustments under the statute may not exceed the maximum permitted under the law (*i.e.*, an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or any exception payment standard approved by the Secretary)) and that the statute does not limit adjustments to upward adjustments. Nonetheless, to accommodate the commenter's concerns, the final rule provides that upon an owners request for a rent adjustment or when there is a 5 percent or greater decrease in the published FMR, rents shall be redetermined.

Comment: In proposed § 983.301(c)(3) on LIHTC rents, the word "chargeable" would be better than the word "charged" in the phrase "the 'tax credit rent' is the rent charged for comparable units of the same bedroom size* * *".

HUD Response: The comment was considered but not adopted. The use of the word "charged" appropriately conveys the definition of tax credit rent that the owner is collecting for the unit.

Comment: Proposed § 983.303 provides that the rent to owner must not exceed the reasonable rent as determined by the PHA. Three commenters, while agreeing that rents are subject to the rent reasonableness test, stated that the rule establishes numerous times at which the PHA must determine rent reasonableness. This, the three commenters argued, is unduly burdensome and will inhibit participation in the program by lenders and investors. HUD should require only an annual determination, they argued. Another commenter stated that a rent comparability study should be conducted initially and then once every 5 years, except where an upward rent adjustment is proposed. No statutory

section requires annual redeterminations of rent during a contract unless rents are increased. One commenter stated that PHAs should be required only once a year to determine rent reasonableness and at the time a new PBV contract is executed. Another commenter stated that two comparables, rather than three, should be required. Another commenter stated that rent, once determined to be reasonable, should not be redetermined at no less than 3-year intervals. Another commenter stated that the requirement that rents be redetermined annually will result in reduced rent to the owner if the payment standard is reduced. This is contrary to section 8(o)(13)(I) of the 1937 Act, which delegates rent determinations to the PHA and to the owner. Furthermore, this provision will make it difficult to use PBV with HOME funds because it is inconsistent with HOME regulations.

HUD Response: The final rule retains the requirements concerning rent reasonableness determinations. Section 8(o)(10)(A) of the United States Housing Act of 1937 requires that rents under the program be reasonable. The implication is that rents must be reasonable at all times. The circumstances under which a PHA is required to redetermine rent reasonableness under the PBV program are not overly burdensome. The final rule also retains the requirement that three comparables must be used. Three comparables, as opposed to two, will more accurately reflect market rental conditions.

Comment: Proposed § 983.304 provides that in the case of projects with HOME funds or other subsidies, the PBV rent may not exceed the rent permitted under the other subsidy program. Four commenters stated objections to this section. This section would appear to authorize PHAs to continue an ongoing subsidy layering review that would create uncertainty with respect to rent levels and discourage participation by private lenders and investors. Two commenters stated that an owner interested in preservation should be able to seek a waiver to allow a Section 236 subsidy in a partially assisted Section 8 project to be allocated to the units with no Section 8 assistance. These commenters state that in § 983.304(b)(2) the words "subsidized" and "(basic rent)" should be deleted. One commenter stated that § 983.304(d) lacks clarity and suggests a revision to § 983.304(d)(the new material is in *italics*):

"At its discretion, a PHA may reduce the initial rent to owner to reflect the assumptions used in the award of other subsidy, including tax credit or tax

exemption, grants, or other subsidized financing."

HUD Response: Rents at projects receiving other forms of subsidy (*e.g.* Section 236) combined with project-based voucher assistance are restricted to the rent restrictions of the applicable subsidized program. Thus, the PBV rent may not exceed the subsidized rent established under the procedures for other subsidized programs.

Subpart H—Payment to Owner

Comment: Proposed § 983.351(b) provides for monthly payments to the owner for each unit that complies with HQS and is leased to and occupied by an eligible family. Four commenters stated that this provision should also indicate that the PHA will include any vacancy payments that it has previously agreed to provide in its monthly assistance payment to the owner.

HUD Response: HUD has considered this comment and is not adopting it. Section 983.351 is titled "PHA payment to owner for occupied unit (emphasis added)." Units for which an owner is receiving vacancy payments are not occupied and are discussed in Section 983.352.

Comment: Proposed § 983.352(b) provides for vacancy payments at the discretion of the PHA. One commenter stated that vacancy payments should be mandatory for all PHAs.

HUD Response: The statute governing the PBV program requires that if the HAP contract allows for vacancy payments, that such payments may be made at a PHA's discretion.

Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m. in the Office of Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), has reviewed and

approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule is exclusively concerned with PHAs that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the rule would give PHAs the option of project-basing up to 20 percent of their annual budget authority under the tenant-based program. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for federal

agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 983 to read as follows:

■ 1. Revise 24 CFR part 983 to read as follows:

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

Subpart A—General

Sec.

- 983.1 When the PBV rule (24 CFR part 983) applies.
- 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.
- 983.3 PBV definitions.
- 983.4 Cross-reference to other Federal requirements.
- 983.5 Description of the PBV program.
- 983.6 Maximum amount of PBV assistance.
- 983.7 Uniform Relocation Act.
- 983.8 Equal opportunity requirements.
- 983.9 Special housing types.
- 983.10 Project-based certificate (PBC) program.

Subpart B—Selection of PBV Owner Proposals

- 983.51 Owner proposal selection procedures.
- 983.52 Housing type.
- 983.53 Prohibition of assistance for ineligible units.
- 983.54 Prohibition of assistance for units in subsidized housing.
- 983.55 Prohibition of excess public assistance.
- 983.56 Cap on number of PBV units in each building.
- 983.57 Site selection standards.
- 983.58 Environmental review.
- 983.59 PHA-owned units.

Subpart C—Dwelling Units

- 983.101 Housing quality standards.
- 983.102 Housing accessibility for persons with disabilities.
- 983.103 Inspecting units.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

- 983.151 Applicability.
- 983.152 Purpose and content of the Agreement to enter into HAP contract.

- 983.153 When Agreement is executed.
- 983.154 Conduct of development work.
- 983.155 Completion of housing.
- 983.156 PHA acceptance of completed units.

Subpart E—Housing Assistance Payments Contract

- 983.201 Applicability.
- 983.202 Purpose of HAP contract.
- 983.203 HAP contract information.
- 983.204 When HAP contract is executed.
- 983.205 Term of HAP contract.
- 983.206 HAP contract amendments (to add or substitute contract units).
- 983.207 Condition of contract units.
- 983.208 Owner responsibilities.
- 983.209 Owner certification.

Subpart F—Occupancy

- 983.251 How participants are selected.
- 983.252 PHA information for accepted family.
- 983.253 Leasing of contract units.
- 983.254 Vacancies.
- 983.255 Tenant screening.
- 983.256 Lease.
- 983.257 Owner termination of tenancy and eviction.
- 983.258 Security deposit: amounts owed by tenant.
- 983.259 Overcrowded, under-occupied, and accessible units.
- 983.260 Family right to move.
- 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

Subpart G—Rent to owner

- 983.301 Determining the rent to owner.
- 983.302 Redetermination of rent to owner.
- 983.303 Reasonable rent.
- 983.304 Other subsidy: effect on rent to owner.
- 983.305 Rent to owner: effect of rent control and other rent limits.

Subpart H—Payment to Owner

- 983.351 PHA payment to owner for occupied unit.
- 983.352 Vacancy payment.
- 983.353 Tenant rent; payment to owner.
- 983.354 Other fees and charges.

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

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, cooperative housing, manufactured home space rental, and the homeownership option.

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

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

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

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

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

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

(3) Subpart H of part 982;

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

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

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

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

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

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

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

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

§ 983.3 PBV definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exempted units (units in a multifamily building not counted against the 25 percent per-building cap). See § 983.56(b)(2)(i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M

provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

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

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

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

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

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

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

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

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

Definitions. See 24 CFR part 5, subpart D.

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

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

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

and section 504 of the Rehabilitation Act.

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

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

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

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

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

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

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

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

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

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

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

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

Waiver of HUD rules. See 24 CFR 5.110.

§ 983.5 Description of the PBV program.

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

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

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

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

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

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

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

§ 983.6 Maximum amount of PBV assistance.

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

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

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

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be

provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24.

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

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

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

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

§ 983.8 Equal opportunity requirements.

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

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

§ 983.9 Special housing types.

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

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

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

disabilities who resides in a group home.

§ 983.10 Project-based certificate (PBC) program.

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

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

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

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

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

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

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

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

(2) Selection of a proposal for housing assisted under a federal, state, or local government housing assistance,

community development, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

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

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

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

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

§ 983.52 Housing type.

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

(a) *Existing housing*—A housing unit is considered an existing unit for

purposes of the PBV program, if at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with Subpart D of this part do not qualify as existing housing.

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

§ 983.53 Prohibition of assistance for ineligible units.

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

(1) Shared housing;

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

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

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

(5) Manufactured homes;

(6) Cooperative housing; and

(7) Transitional Housing.

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

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

(d) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

§ 983.54 Prohibition of assistance for units in subsidized housing.

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

(a) A public housing dwelling unit;

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

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

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

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

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

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

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

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

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

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

(l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering)

housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

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

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

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

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

(b) *Exception to 25 percent per building cap.* (1) *When PBV units are not counted against cap.* In the following cases, PBV units are not counted against the 25 percent per building cap:

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

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

(ii) "Qualifying families" means:

- (A) Elderly or disabled families; or
- (B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-

related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under § 983.261(d), and the owner may terminate the lease in accordance with § 983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

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

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

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

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

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

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

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

§ 983.57 Site selection standards.

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

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

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

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

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

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

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

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

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20

percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

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

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

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

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

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

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

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

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

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

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

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

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

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

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

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

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

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

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

(iv) Units may be considered "comparable opportunities," as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require

approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

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

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

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

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

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

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

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

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

(vi) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a "revitalizing area"). An "overriding housing need," however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of

circumventing the obligation to provide housing choice.

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

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

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

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

§ 983.58 Environmental review.

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

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the "responsible entity" or "RE") is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

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

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

(d) *Limitations on actions before completion of the environmental review.*

(1) The PHA may not enter into an

Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

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

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

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

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

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

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

§ 983.59 PHA-owned units.

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

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

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract

rents based on an appraisal by a licensed, state-certified appraiser; and (2) Inspection of PHA-owned units as required by § 983.103(f).

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

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

(2) The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

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

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

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

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

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

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality

standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

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

§ 983.103 Inspecting units.

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

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

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

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

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

meeting this annual inspection requirement.

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

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

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

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

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

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

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

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

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

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

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required

by HUD headquarters (see § 982.162 of this chapter).

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

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

- (i) Site;
- (ii) Location of contract units on site;
- (iii) Number of contract units by area (size) and number of bedrooms and bathrooms;
- (iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

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

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(i)(viii) of this section.

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

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

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

§ 983.153 When Agreement is executed.

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

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

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

§ 983.154 Conduct of development work.

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

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

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

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

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

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

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

list of parties excluded from federal procurement and nonprocurement programs.

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

§ 983.155 Completion of housing.

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

(b) *Required evidence of completion.*

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

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

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

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

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

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

(A) HUD housing quality standards;

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

(C) Zoning;

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

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

§ 983.156 PHA acceptance of completed units.

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

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

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

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

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

Subpart E—Housing Assistance Payments Contract**§ 983.201 Applicability.**

Subpart E applies to all PBV assistance under part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

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

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

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

§ 983.203 HAP contract information.

The HAP contract must specify:

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

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

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

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

(e) Utilities available to the contract units, including a specification of utility

services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

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

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per building cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and

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

§ 983.204 When HAP contract is executed.

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

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

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

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

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

§ 983.205 Term of HAP contract.

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

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

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

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

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

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

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

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

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of authorized budget authority

as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same building. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

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

§ 983.207 Condition of contract units.

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

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

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

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

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under

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

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

§ 983.208 Owner responsibilities.

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

§ 983.209 Owner certification.

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

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

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

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

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

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

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

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

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

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

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.

(b) *Protection of in-place families.* (1) The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (However, the PHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.)

Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

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

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

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units)

or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

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

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

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

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

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

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

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

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

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

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

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

(2) If a PBV owner rejects a family for admission to the owner's PBV units,

such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

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

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

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

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

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

§ 983.252 PHA information for accepted family.

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

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

(2) Family and owner responsibilities.

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

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

(2) Family obligations under the program; and

(3) Applicable fair housing information.

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

(2) The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

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

§ 983.253 Leasing of contract units.

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

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

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

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

§ 983.254 Vacancies.

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

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

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

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

§ 983.255 Tenant screening.

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

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

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

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

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

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

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

(v) Compliance with other essential conditions of tenancy;

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

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

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

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

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

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

§ 983.256 Lease.

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

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

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

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

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

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

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

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

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

(4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;

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

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

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

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

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

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

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

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

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

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

is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction.

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

(b) Upon lease expiration, an owner may:

(1) Renew the lease;

(2) Refuse to renew the lease for good cause as stated in paragraph (a) of this section;

(3) Refuse to renew the lease without good cause, in which case the PHA would provide the family with a tenant-based voucher and the unit would be removed from the PBV HAP contract.

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

§ 983.258 Security deposit: amounts owed by tenant.

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

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

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

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

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

any amount owed by the family to the owner.

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

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

(1) Wrong-size unit, or

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

(b) *PHA offer of continued assistance.*

(1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

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

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (e.g., by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

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

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

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

§ 983.260 Family right to move.

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

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

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

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

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

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

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

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

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per building cap exception (e.g., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family

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

Subpart G—Rent to Owner**§ 983.301 Determining the rent to owner.**

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

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

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

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

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

(2) The reasonable rent; or

(3) The rent requested by the owner.

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

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

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

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

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

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

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

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

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

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

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

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

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

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

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

(ii) *Redetermination of rent to owner.* When redetermining the rent to owner, the PHA shall use the most recently

published FMR and the PHA utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

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

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

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

§ 983.302 Redetermination of rent to owner.

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

(1) Upon the owner's request; or
(2) When there is a five percent or greater decrease in the published FMR in accordance with § 983.301.

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

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

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

(c) *Rent decrease.* If there is a decrease in the rent to owner, as

established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

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

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

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

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

§ 983.303 Reasonable rent.

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

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

(1) Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 983.304 Other subsidy: effect on rent to owner.

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

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

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

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

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

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

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

(v) A project receiving low-income housing tax credits;

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

(2) 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 listed in paragraph (c)(1) of this section.

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

(e) *Other subsidy: PHA discretion to reduce rent.* At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

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

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

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

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

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

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

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance

payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

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

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

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

§ 983.352 Vacancy payment.

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

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

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

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

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

best of the owner’s knowledge and belief);

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

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

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

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

§ 983.353 Tenant rent; payment to owner.

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

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

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

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

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

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

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

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

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

(2) The PHA either may pay the utility reimbursement to the family or may pay

the utility bill directly to the utility supplier on behalf of the family.

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

§ 983.354 Other fees and charges.

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

(2) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may

not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

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

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Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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