Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and DMMHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the DMMHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the DMMHA’s discretion. This section also includes owner responsibilities under the HAP contract and under the PBV Program.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the DMMHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.
PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]

The project-based voucher (PBV) program allows DMMHA, which already administers a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6].

DMMHA will operate a project-based voucher program using up to twenty percent of its authorized units for project-based assistance. The DMMHA defines a project as a single building, or as multiple contiguous buildings, or as multiple buildings on contiguous parcels of land (PIH Notice 2017-21).

DMMHA’s PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing. [24 CFR 983.52] If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the DMMHA is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the DMMHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the DMMHA has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.

- Are specifically made available to house families that are comprised of or include a veteran. **Veteran** means an individual who has served in the United States Armed Forces.

- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.

- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

Only units that that are under a HAP contract that was first executed on or after April 18, 2017, may be covered by the 10 percent exception.
Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]

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

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17.

The DMMHA will not project-base any units not subject to the 20 percent cap.

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the DMMHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

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

17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

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

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. DMMHA may not use voucher program funds to cover relocation costs, except that DMMHA may use administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

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

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The DMMHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the DMMHA must comply with the DMMHA DMMHA S8 Administrative Plan
Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).
PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

The DMMHA must describe the procedures for owner submission of PBV proposals and for DMMHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the DMMHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The DMMHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 (Notice PIH 2011-54).

A “project” is defined as a single building, multiple contiguous building, or multiple buildings on a contiguous parcel of land.

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51b]

The DMMHA will select PBV proposals one of the following three methods:

- **DMMHA request for PBV Proposals-** The DMMHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the DMMHA request. The DMMHA 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.

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

**Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21]**

For certain public housing projects where the DMMHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the DMMHA may select a project without following one of the two processes above.

The DMMHA may select a project that meets the following criteria:

- **Non-competitive partnership agreements with qualified Low Income Housing Tax Credit (LIHTC) developers for projects that meet the mission of the DMMHA and further expand affordable housing opportunities within the DMMHA jurisdiction where the DMMHA would be the owner/operator of said development.**
Solicitation and Selection of PBV Proposals [24 CFR 983.51 (c)]

DMMHA procedures for selecting PBV proposals are designed and operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the DMMHA. The public notice procedures will include publication of the public notice in a local newspaper of general circulation and other means designed and operated to provide broad public notice. The public notice of the DMMHA request for PBV proposals must specify the submission deadline. Detailed application and selection information will be provided at the request of interested parties.

DMMHA Request for Proposals for Rehabilitated and Newly Constructed Units

The DMMHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing units in the Des Moines Register newspaper. The DMMHA will post the notice inviting such proposal submission and the rating and ranking procedures at City Hall. In addition, the DMMHA will mail notice to a list of potential proposers.

The DMMHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Experience as a property manager of affordable rental housing;
- Extent to which the project furthers DMMHA’s goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property;
- Extent to which amenities are provided by the property owner; and
- Extent to which the project will assure the viability of long term affordable housing opportunities.

DMMHA Requests for Proposals for Existing Housing Units

The DMMHA will advertise its request for proposals (RFP) for existing housing in the Des Moines Register newspaper. The DMMHA will post the notice inviting such proposal submission and the rating and ranking procedures. In addition, the DMMHA will mail notice to a list of potential proposers.

Owner proposals will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner’s obligations under the tenant-based program; Extent to which the project furthers the DMMHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property;
- Extent to which amenities are provided by the property owner; and
- Extent to which the project will assure viability of long term affordable housing opportunities.
• Extent to which units are occupied by families that are eligible to participate in the PBV program.

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

The DMMHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits.

The DMMHA may periodically advertise that it is accepting proposals. In addition to, or in place of advertising, the DMMHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The DMMHA will evaluate each proposal on its merits using the following factors:

• Extent to which the project furthers the DMMHA’s goal of deconcentrating poverty and expanding housing and economic opportunities; and

• Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

DMMHA-Owned Units [24 CFR 983.51(e), 983.59, Notice PIH 2017-21, and FR Notice 1/18/17]

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

The DMMHA may submit a proposal for project-based housing that is owned or controlled by the DMMHA. If the proposal for DMMHA-owned housing is selected, the DMMHA will use a HUD approved public or private independent entity to review the DMMHA selection and to administer the PBV program. The DMMHA will obtain HUD approval prior to selecting the proposal for DMMHA-owned housing.

In the case of DMMHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the DMMHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.
The DMMHA may only compensate the independent entity from DMMHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The DMMHA may not use other program receipts to compensate the independent entity for its services. The DMMHA and independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

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

The DMMHA 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.

The DMMHA will promptly notify the selected owner in writing of the owner’s selection for the PBV program. The DMMHA will also notify in writing all owners that submitted proposals that were not selected.

**17-II.C. HOUSING TYPE [24 CFR 983.52]**

The DMMHA will attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of DMMHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The DMMHA choice of housing type will be reflected in its solicitation for proposals.

**17-ILD. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

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

The DMMHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the DMMHA may not attach or pay PBV assistance for a unit occupied by an owner and the DMMHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of a HAP.
High-rise Elevator Projects for Families with Children [24 CFR 983.53(b)]

The DMMHA will not allow project based assistance to be used in high-rise elevator projects for families with children.

Subsidized Housing [24 CFR 983.54]

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

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that DMMHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the DMMHA in accordance with HUD requirements.


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

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

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD’s designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

The DMMHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, the DMMHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD or a HUD approved Housing Credit Agency (HCA) has
conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with guidelines set forth in the Federal Register notice published July 9, 2010.

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.

17-ILF. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 1/18/17, and Notice PIH 2017-21]

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

- Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]
  - As of April 18, 2017, units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:
    - The units are exclusively for elderly families
    - The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
      - The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

- Supportive Services
  The DMMHA must include in the DMMHA’s 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. As of 4/18/17, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. The DMMHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

The following types of services will be provided depending on the needs of the family:
- Transportation for activities such as grocery shopping, attending medical and dental appointments;
- Supervised taking of medications;
- Treatment for drug rehabilitation in the case of current abusers;
- Treatment for alcohol addiction in the case of current abusers;
- Training in housekeeping and homemaking activities;
- Family budgeting;
- Child care;
- Parenting skills;
- Computer labs; and
- Work skills development and job training.

**Projects not Subject to a Project Cap** [FR Notice 1/18/17; Notice PIH 2017-21]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

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

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

The DMMHA will not impose any further cap on the number of PBV units assisted per project.

**17-II.G. SITE SELECTION STANDARDS**

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

It is the DMMHA’s goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the DMMHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

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

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

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

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

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

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

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

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the DMMHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
• The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

• The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;

• The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

• Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-ILH. ENVIRONMENTAL REVIEW [24 CFR 983.58]

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

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 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 DMMHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the DMMHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The DMMHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The DMMHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.
PART III: DWELLING UNITS

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

17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]
The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program.

HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

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

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

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES
The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The DMMHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

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

17-III.D. INSPECTING UNITS

**Pre-selection Inspection [24 CFR 983.103(a)]**
The DMMHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the DMMHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the DMMHA may not execute the HAP contract until the units fully comply with HQS.
Pre-HAP Contract Inspections [24 CFR 983.103(b)]

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

Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]

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

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every twelve months during the term of the HAP contract, the DMMHA must inspect a random sample, consisting of at least 20 percent of the contract units in each project to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

If more than 20 percent of the sample of inspected contract units in a project fails the initial inspection, the DMMHA must reinspect 100 percent of the contract units in the project.

Other Inspections [24 CFR 983.103(e)]

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

The DMMHA 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 HQS.

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

Inspecting DMMHA-owned Units [24 CFR 983.103(f)]

In the case of DMMHA-owned units, the inspections must be performed by an independent agency designated by the DMMHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the DMMHA and to the HUD field office where the project is located. The DMMHA 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 DMMHA-owner.
PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

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

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

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the DMMHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The DMMHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

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

Content of the Agreement [24 CFR 983.152(d)]

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

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

- Any additional requirements for quality, architecture, or design over and above HQS.

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

The Agreement must be executed promptly after DMMHA notice of proposal selection to the selected owner. The DMMHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the DMMHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the DMMHA may not enter into the Agreement until the environmental review is completed and the DMMHA has received environmental approval. However, the DMMHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

**17-IV.C. CONDUCT OF DEVELOPMENT WORK**

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

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

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

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

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

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

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

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

**17-IV.D. COMPLETION OF HOUSING**
The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

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

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

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

At the DMMHA’s discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

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

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

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

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

If the DMMHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the DMMHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.
PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW
The DMMHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]
The HAP contract must specify the following information:

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

Execution of the HAP Contract [24 CFR 983.205]
The DMMHA may not enter into a HAP contract until each contract unit has been inspected and the DMMHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract will be executed promptly after the DMMHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing, the HAP contract must be executed after the DMMHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.
Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]

The DMMHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years.

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the DMMHA may extend the term of the contract for an additional term of up to 20 years if the DMMHA determines that an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. The DMMHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the DMMHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. Under no circumstances may each extension exceed 20 years cumulatively.

Extensions beyond the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the DMMHA agrees to extend the term and determines that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term.

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

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner’s record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

Termination by DMMHA [24 CFR 983.205(c); FR Notice 1/18/17]

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

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

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

Termination by Owner [24 CFR 983.205(d)]

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

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17, and Notice PIH 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the DMMHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

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

Remedies for HQS Violations [24 CFR 983.208])
The DMMHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the DMMHA determines that a contract does not comply with HQS, the DMMHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

The DMMHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Chapter 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

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

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

Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]

At the DMMHA’s discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per project and on the overall size of the DMMHA’s PBV program, a HAP contract may be amended to add additional PBV units in the same project. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required, however they are still subject to the PBV program cap and individual project caps.

DMMHA would be required to submit to the local HUD field office information outlined in FR Notice 1/18/17 and must also detail in the Administrative Plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]

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

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

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

17-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:
• All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;

• The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;

• Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the DMMHA, and the lease is in accordance with the HAP contract and HUD requirements;

• To the best of the owner’s knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family’s only residence;

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

• The amount of the HAP the owner is receiving is correct under the HAP contract;

• The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

• Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and

• The family does not own or have any interest in the contract unit.

• Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.
17-IV.F. OWNER RESPONSIBILITIES UNDER THE PBV PROGRAM [24 CFR 983.208]

The owner is responsible for performing all of the same owner responsibilities as the tenant based voucher program, regulated at 24 CFR 982.452. See Chapter 13-I.C. Owner Responsibilities for a full discussion.

17-V.G. ADDITIONAL HAP REQUIREMENTS

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

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

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

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

Vacancy Payments [24 CFR 983.352(b)]

The DMMHA will decide on a case-by-case basis if the DMMHA will provide vacancy payments to the owner. If DMMHA-determined, the DMMHA will provide a vacancy payment of 50 percent of the monthly rent to owner for a period of one month. The amount of the vacancy payment 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). The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.
PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

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

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

The DMMHA may select families for the PBV program from those who are participants in the DMMHA’s tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance. Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program.

The DMMHA will determine an applicant family’s eligibility for the PBV program in accordance with the policies in Chapter 3.

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

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the DMMHA is considered an “in-place family.” These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the DMMHA’s waiting list. Once the family’s continued eligibility is determined (the DMMHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the DMMHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

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

17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The DMMHA will establish and manage separate waiting lists for individual projects that are receiving PBV assistance.

17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the DMMHA’s Project Based Voucher waiting list. The DMMHA may place families referred by the PBV owner on its PBV waiting list.
**Income Targeting [24 CFR 983.251(c)(6)]**

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

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

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

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

The DMMHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” persons with mobility impairments for accessible units). The preferences offered by DMMHA will depend on the local housing needs, the type of housing that is receiving project-based assistance, whether services are being offered, and whether the housing is intended for particular populations. The following additional preferences have been established for the PBV program:

- Homeless
- Households moving from transitional housing

**17-VLE. OFFER OF PBV ASSISTANCE**

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

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

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

**Unit Refusal without Good Cause**

When an applicant rejects the unit offer without good cause, the DMMHA will remove/retire the applicant from the PBV waiting list that they refused.

1. Examples include, but are not limited to:
   
   (a) A doctor verifies that the applicant has just undergone major surgery and needs a period to recuperate;
   
   (b) A court verifies that the applicant is serving on a jury which has been sequestered.
The DMMHA will require documentation of good cause for unit refusals.

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

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

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

**Family Briefing**

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

**17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant’s ability to fulfill their obligations under the lease. In addition to providing the written tenant selection procedures as part of the request for proposal process, DMMHA requires that an owner provide to DMMHA an updated copy of the written tenant selection procedures at the time of any requested rent increase.

An owner must promptly notify in writing any rejected applicant and the DMMHA of the grounds for any rejection [24 CFR 983.253((a)(2) and (a)(3).

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

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the DMMHA from the DMMHA’s waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the DMMHA’s subsidy standards found in Chapter 5 Part II.

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

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

The owner must notify the DMMHA in writing (in person, mail, or fax) within 5 business days of learning about any vacancy or expected vacancy.

Upon receipt of a notice of a vacancy, the DMMHA will select the next three applicants on the PBV waiting list and process according to the regular HCV processing steps.

After determining final eligibility, the DMMHA will promptly refer families to the owner. In the event that one or more applicant families have been determined eligible to
be referred to the PBV owner at the same time, the applicant family that contacts the PBV owner first will have the first opportunity to accept the available PBV unit.

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

If any contract units have been vacant for 120 days, the DMMHA will give 30 day notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The DMMHA will provide the notice in writing. The amendment to the HAP contract will be effective the 1st day of the month at least 30 days following the date of the DMMHA’s notice.

**Reduction of HAP Contract Units Due to Tenant Rent Equaling or Exceeding the Rent to Owner [HERA July 2014]**

In instances where the family’s income increases and the tenant rent equals or exceeds the rent to the owner, the unit must be removed from the HAP contract no more than 180 days after the last HAP payment. The DMMHA may reinstate the unit to the HAP contract once the ineligible family moves out.

**17-V.I.G. TENANT SCREENING [24 CFR 983.255]**

**DMMHA Responsibility**

The DMMHA will conduct screening to determine a PBV applicant’s eligibility in accordance with the policies in Chapter 3 of this Plan.

The DMMHA must provide the owner with an applicant family’s current and prior address (as shown in DMMHA records) and the name and address (if known by the DMMHA) of the family’s current landlord and any prior landlords.

The DMMHA must provide applicant families a description of the DMMHA policy on providing information to owners, and the DMMHA must give the same types of information to all owners.

The DMMHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information. The DMMHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

**Owner Responsibility**

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

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

17-VII.A. OVERVIEW

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

17-VII.B. LEASE [24 CFR 983.256]

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

Form of Lease [24 CFR 983.256(b)]

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

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use DMMHA’s model lease.

The DMMHA will not review the owner’s lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c), HERA July 2014]

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

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance withHUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the DMMHA (the names of family members and any DMMHA-approved live-in aide);
• All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and HERA July 2014]

The initial lease term must be for at least one year. The DMMHA may, at its sole discretion, make an exception to the start of the lease term for participants in the Project Based Voucher Program. Upon expiration of the lease, the lease must automatically renew unless the owner refuses to renew the lease for “good cause”. The owner cannot refuse to renew a lease without good cause upon lease expiration.

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

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

The owner must provide to the DMMHA 60 days written notice of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the DMMHA and in accordance with the terms of the lease relating to its amendment. The DMMHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

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

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

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by DMMHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. DMMHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the DMMHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the DMMHA of the change and request an interim reexamination before the expiration of the 180-day period.
Security Deposits [24 CFR 983.259]

The owner may collect a security deposit from the tenant. The amount of security deposit established by the property owner in no instance may exceed the amount of one month’s contract rent, or be in excess of amounts charged by the owner to unassisted tenants.

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

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

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

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260, HERA July 2014]

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

The DMMHA will promptly notify the family and the owner in writing of the family’s need to move based on the occupancy of a wrong-size or accessible unit. The DMMHA will offer the following types of continued assistance in the following order, based on the availability of assistance:

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

If a family is eligible for and offered Public Housing assistance and fails to accept the offer of Public Housing assistance, the family will not be offered tenant-based voucher assistance.

If the DMMHA offers the family a tenant-based voucher, the DMMHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family’s voucher (including any extension granted by the DMMHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the DMMHA must remove the unit from the HAP contract.

If the DMMHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time, and fails to accept the offer of Public Housing assistance, the family will be removed from the HAP contract.

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time as determined by the DMMHA, or both, the DMMHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the DMMHA. The DMMHA must also remove the unit from the HAP contract.

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

The DMMHA may make exceptions to this 30-day period at the sole discretion of the DMMHA Director.

**Family Right to Move [24 CFR 983.261]**

If the family wishes to move after the first year of occupancy with tenant-based assistance, the family must contact the DMMHA to request the tenant-based rental assistance prior to providing notice to the owner to terminate the lease. The DMMHA will offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance, if both of the following requirements are met:

1. The family provided a written request to DMMHA to utilize tenant-based rental assistance prior to providing notice to the owner to terminate the lease, AND
2. The family gave proper lease termination notice in writing to the owner and DMMHA in accordance with the lease.

If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family’s lease in the PBV unit, the DMMHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If a voucher is available, the family will be given two (2) opportunities to attend a briefing session to receive the voucher. If the family fails to attend the briefing, the family relinquishes the opportunity for continued tenant-based assistance.

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

**Emergency Transfers under VAWA [Notice PIH 2017-08]**

The DMMHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan (See Exhibit 10-1) as the basis for PBV transfers under VAWA.

**17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

As of April 17, 2018, the DMMHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless FR Notice 1/18/17:
• The units are exclusively for elderly families
• The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the DMMHA 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. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the DMMHA, and the DMMHA shall cease paying HAP on behalf of the family.

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

When the DMMHA determines that a family does not successfully complete its FSS contract of participation, the DMMHA will provide prompt written notice to the family and owner. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the DMMHA will terminate the housing assistance payments at the expiration of this 30-day period.

The DMMHA may make exceptions to this 30-day period at the sole discretion of the DMMHA Director.

The DMMHA may refer other eligible families to the excepted units. However, if there are no eligible families on the waiting list and the owner does not refer eligible families to the DMMHA, the DMMHA will amend the HAP contract to reduce the total number of units under contract.

In the event that the elderly family member dies or moves out of the unit and thus the family no longer qualifies as an “elderly” family, the remaining family members living in the excepted unit may continue to occupy the unit with continued assistance.
PART VIII: DETERMINING RENT TO OWNER

17-VIIIA. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term.

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

17-VIIIB. RENT LIMITS [24 CFR 983.301]

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

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

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

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

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard);

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

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

Definitions

A qualified census tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.
Tax credit rent is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

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

When determining the initial rent to owner, the DMMHA must use the most recently published FMR in effect and the utility allowance schedule in effect for the tenant-based voucher program at execution of the HAP contract. When redetermining the rent to owner, the DMMHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination.

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

Upon written request by the owner, the DMMHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The DMMHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the DMMHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the DMMHA determines it is necessary due to DMMHA budgetary constraints.

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

**Rent Increase**

If an owner wishes to request an increase in the contract rent, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The DMMHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

An owner’s request for a rent increase must be submitted in writing to the DMMHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is requesting.

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

**Rent Decrease**

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent...
amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the DMMHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change

The DMMHA notice of rent adjustment constitutes an amendment of the contract rent specified in the HAP contract.

The DMMHA will provide the owner with at least 30 days written notice of any change in the amount of contract rent.

DMMHA-owned Units [24 CFR 983.301(g)]

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

17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the DMMHA, except that the rent to owner shall not be reduced below the initial rent in accordance with 24 CFR 983.302(c)(2) and unless as stated above (see “Rent Decrease”).

When Rent Reasonable Determinations are Required

The DMMHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

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

How to Determine Reasonable Rent

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

Comparability Analysis

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

**DMMHA-owned Units**

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

**Owner Certification of Reasonable Rent**

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

**17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

**Other Subsidy [24 CFR 983.304]**

At its discretion, the DMMHA may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing. A rent reduction is mandatory when the results of a subsidy layering review disclose the need for a rent reduction. (HERA July 2014)

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

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

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

**Combining Subsidy**

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.
Rent Control [24 CFR 983.305]

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

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the DMMHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment 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 DMMHA agree on a later date.

The DMMHA 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).

The amount of the housing assistance payment by the DMMHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

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

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

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

If the DMMHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the DMMHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The DMMHA will require the owner to repay the amount owed in accordance with the policies in Chapter 16-IV.B.

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

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

If an owner’s HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the DMMHA of the vacancy in
writing (in person), mail, or fax) within 5 business days of learning about any vacancy or expected vacancy.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the DMMHQA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the DMMHQA within 10 business days of the DMMHQA’s request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

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

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

Tenant and DMMHQA Responsibilities

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

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

Utility Reimbursements

The DMMHQA will make utility reimbursements to the utility provider. The participant is responsible to provide the account number to which DMMHQA should apply the payment.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services.

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

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