

## CHAPTER 17. Title PROJECT-BASED VOUCHERS [24 CFR 983.1 through 983.262]

### INTRODUCTION

This chapter describes HUD regulations and OHA 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 that OHA 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 OHA's discretion.

**Part VI: Selection of PBV Program Participants.** This part describes the requirements and policies governing how OHA 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.

**The program rules discussed within this chapter are primarily those required by HUD. OHA is authorized under MTW to develop and adopt reasonable policies and processes to explore and test innovative methods of delivering Housing Choice Voucher assistance and supportive services to low-income families in Oakland. MTW policies and procedures are described in OHA's MTW Annual Plan and may conflict with HUD regulatory requirements. In the event that the policies do conflict, the approved MTW policy shall prevail. Where no MTW policy or procedure exists, then standard HCV rules and regulations apply.**

## PART I. GENERAL REQUIREMENTS

### 17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. In addition, PHAs are limited to project-basing up to 25 percent (25%) of units in a single development. OHA may only operate a PBV program if doing so is consistent with OHA's Annual Plan and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)]. 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, OHA is not required to reduce the number of these units if the amount of authorized units is subsequently reduced. However, the PHA 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 OHA has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17]**

OHA 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.

- For units under a HAP contract that was first executed on or after April 18, 2017, 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).
- 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.

PBV units that house eligible youth receiving FUPY/FYI assistance are also covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. FYI TPVs that were awarded under Notice PIH 2019-20 are not part of this exception since PHAs are prohibited from project-basing FYI TPVs. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority [FR Notice 1/24/22]. See Chapter 19 for policies specific to project-basing FUPY vouchers.

#### **OHA Policy**

MTW Activity #12-01 allows OHA to eliminate PBV caps and time limits for MTW vouchers and non-MTW vouchers as permitted..

#### **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 April 18, 2017.

### **OHA Policy**

Under MTW Activity #12-02, OHA is authorized to determine the percentage of tenant-based voucher assistance that it is permitted to be project-based and the percentage of project-based assistance allowed in a single development, and criteria for expending funds for physical improvements on those units that differ from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations.

Under MTW Authority, the caps on both the overall number of PBV allocations and the number of PBVs that can be allocated to a single development are eliminated.

PBV assistance may be attached to existing, newly constructed, rehabilitated and also Sponsor Based housing.

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

Many of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the OHA 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.

### **OHA Policy**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations or OHA policies, including policies and process developed under the MTW demonstration program for the tenant-based voucher administration, may 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. OHA may not use voucher program funds to cover relocation costs, except that OHA may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in [24 CFR 982.155] and other official HUD issuances.

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

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

OHA 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, OHA must comply with OHA 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

With certain exceptions, OHA must describe the procedures for owner submission of PBV proposals and for OHA's selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, OHA 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]. OHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### 17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

OHA must select PBV proposals in accordance with the selection procedures in OHA administrative plan. OHA may select PBV proposals by either of the following methods.

- OHA request for PBV Proposals. OHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the OHA request. OHA may not limit proposals to a single site or impose restrictions that explicitly or particularly preclude owner submission of proposals for PBV housing on different sites.
- OHA may select proposal 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, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. OHA need not conduct another competition.

### **Units Selected Non-Competitively [FR Notice 1/18/17 Notice PIH 2017-21; 24 CFR 983.51(b)]**

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

This exception applies when OHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which OHA entered into the AHAP or HAP. If OHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If OHA plans to replace public housing by attaching PBV assistance to existing housing in which OHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS/NSPIRE standards.

OHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

### **OHA Policy**

OHA will not attach PBVs to projects owned by OHA as described above.

OHA may select projects under MTW authority without engaging in a competitive process, subject to the approval of the OHA Board of Commissioners. In accordance with MTW Activity #06-02, certain project-based voucher proposals may be selected without engaging in a competitive process. Projects selected must be approved by the OHA Board of Commissioners and are subject to HUD's requirements regarding environmental and subsidy layering reviews.

OHA may select projects based on MTW authority waivers granted by HUD as stated in OHA's annual MTW Plan. See [www.oakha.org](http://www.oakha.org) for latest versions of the MTW Annual Plan. Authorization waiver examples include override allocation caps and overall percentage allocation caps, site selection standards, combine PBV contracts for multiple non-contiguous sites, alternative initial rent determinations for PBV units and definition of a project for allocation.

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

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

### **OHA Policy**

OHA reviews projects through a two tiered review process: Threshold Review (Tier One) and Financial/Developer Underwriting (Tier Two).

Standard Threshold Criteria for Oakland Housing Authority for City of Oakland:

#### ***Threshold Review (Tier One)***

- The development proposed is located within OHA's jurisdiction
- Percent vouchers required
- AMI served – is project mixed income , 100% low income, serving special populations (seniors, disabled, homeless)
- Projects prioritizing integration with the surrounding community
- Evidence of commitment to community engagement with surrounding community
- The subsidy required equates 1:1 to the number of units serving homeless populations.
- Acquisition/ Rehab/ New Construction/ Infill Development

#### ***Financial Underwriting (Tier Two)***

- All sources are identified
- Evidence of funding gap and total gap
- Determination of need for vouchers or other source
- Guarantees required
- Other requirements of PHA participation (guarantees)
- OHA participation in fees
- Services needed and/or provided
- Proposed per unit Total Development Cost

### ***Developer Underwriting (Tier Two)***

- Readiness
- Developer experience
- Property management experience – provide management plan - evidence of existing portfolio, proposed management plan
- Service provider experience
- MBE/ DBE/ Section 3 participation

### **NOFA/RFP Process for OHA Award of Project Based Vouchers**

OHA permits competitive processes from the following sources for Project Based Voucher award through the competitive HUD requirement:

- OHA solicitation
- City of Oakland solicitation
- County of Alameda solicitation
- TCAC and CDLAC solicitation processes

When OHA issues its own solicitation, it should reflect all the criteria as outlined in the Two-Tier review process.

OHA will advertise its solicitation in a local news source of general circulation and will also utilize non-English language publications.

In addition, OHA will post the solicitation and proposal submission on its website ([www.oakha.org](http://www.oakha.org)).

OHA will publish its advertisement for at least one day per week for a minimum of one week. The advertisement will estimate the number of vouchers available.

The advertisement will contain a statement that participation requires compliance with all Federal, State, and local requirements, including Fair Housing and Equal Opportunity requirements, NEPA, HQS/NSPIRE standards, and neighborhood standards, etc.. Federal Labor Standards provisions may be applicable.

In order for the proposal to be considered, the owner must submit a proposal to OHA by the published deadline, and the proposal must respond to all requirements as outlined in the solicitation. Incomplete proposals will not be reviewed.

OHA will rate and rank proposals using but not limited to the criteria outlined in the Two-Tier Review process.

### **OHA selection of projects under MTW authority without engaging in a competitive process**

Under MTW Activity #06-02, OHA may select projects under MTW authority without engaging in a competitive process. Projects that may be selected for project-based voucher assistance without engaging in a competitive process include:

Properties owned directly or indirectly by OHA that are not Public Housing; or

OHA Public Housing modernization activities including the replacement on a one for one basis, of public housing units that are being permanently removed from the Public Housing program inventory.

Projects selected without engaging in a competitive process must be approved by the OHA Board of Commissioners.

### **OHA-owned Units [24 CFR 983.51(e) and 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]**

OHA owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the OHA-owned units were appropriately

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

In the case of OHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by OHA and a HUD-approved independent entity. The initial contract rent must be approved by the independent entity. In addition, housing quality standards inspections must be conducted by the independent entity or a third party vendor contracted by the independent entity.

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

### **OHA Policy**

OHA will use an independent entity approved by HUD, to perform required rent determinations and housing quality standards inspections in PBV program units where OHA has an identity of interest in the property.

A state-certified appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites located within that geographical area.

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

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

OHA 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.

### **OHA Policy**

OHA will give prompt written notification to the selected owner of a PBV program award. The award notice will include the number of vouchers awarded by bedroom size and state a deadline by which the project owner must enter into an agreement to enter into HAP or a HAP contract to provide PBV assistance for the awarded units in the project. OHA will also notify in writing all owners that submitted proposals that were not selected.

In addition, OHA will publish public notice of the selection of PBV proposals on the OHA website. The announcement will include the name of the owner/project and the number of project-based vouchers that were awarded for the PBV program. OHA will post the public notice of selection of PBV proposals on the OHA website.

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

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

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

## **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

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

OHA 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; and manufactured homes. In addition, OHA may not attach or pay PBV assistance for a unit occupied by an owner and OHA 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 an AHAP.

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

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

- A public housing dwelling unit;
- A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based rental assistance);
- A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent) ;
- 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 (12 U.S.C. 1715z-1). However, OHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, OHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);
- Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- Section 202 supportive housing for the elderly (12 U.S.C. 1701q);
- A Section 101 rent supplement project (12 U.S.C. 1701s);
- A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) ( e.g. , a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq. );
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by OHA in accordance with HUD requirements. For this purpose, "housing subsidy" does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

### **OHA Policy (MTW)**

OHA may allocate PBV assistance to the Special Housing types described in Chapter 15, based on HUD approved MTW activities. These special housing types include single room occupancy (SRO), group homes and shared housing. The MTW activity may alter program requirements by imposing



additional participant obligations such as transfer restrictions, participation in available service programs, graduation requirements or term limits as described in the activity or specific program guidelines. Service providers may directly refer applicants to OHA for admission to targeted service enriched program units and maintain a waitlist for referral of future program applicants.

Additionally, to enhance the accessibility and the effectiveness of programs serving a special needs population, OHA may attach PBV assistance to units developed with Housing Opportunities of Persons with AIDS (HOPWA) or Mental Health Services Act (MHSA) Housing Program funding as long as the HOPWA or MHSA program funding does not duplicate any form of rental assistance for the family. PBV assistance awarded to HOPWA or MHSA program units may also be administered as Sponsor Based Housing if selected in response to an OHA invitation for proposals for Sponsor Based Housing.

#### **17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 2/28/20]]**

OHA may provide PBV assistance only in accordance with HUD subsidy layering regulations 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.

OHA must submit the necessary documentation to HUD for a subsidy layering review.

Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs) noted above, OHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, 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 the guidelines set forth in the *Federal Register* notice published February 28, 2020.

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-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

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

In general, OHA 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; Notice PIH 2017-21; FR Notice 1/24/22]**

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

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
  - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

### **OHA Policy**

Under MTW Authority, the caps on both the overall number of PBV allocations and the number of PBVs that can be allocated to a single development are eliminated. MTW Activity #12-01 allows OHA to eliminate PBV caps and time limits. authorizes OHA to determine the percentage of tenant-based voucher assistance that it is permitted to project-base and the percentage of project-based assistance allowed in a single development, and criteria for expending funds for physical improvements on those units that differ from the percentage and criteria requirements currently mandated in the 1937 Act and its implementing regulations.

### ***Supportive Services***

OHA must include in the OHA 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. 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. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

### **OHA Policy**

Excepted units will be limited to units for elderly families.

### **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. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date OHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:
  - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 202), Housing for Persons with disabilities (Section 811), the Rental Supplement program,

- The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

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

OHA 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].

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

### **OHA Policy (MTW)**

Under MTW authority, Activity #12-01 will not limit the number of total number of dwelling units in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

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

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

OHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless OHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the OHA administrative plan.

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

### **OHA Policy**

Under MTW authority, OHA will apply the following Site and Neighborhood Standards for the award of PBV assistance: OHA will comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations thereto, in determining the location of newly constructed or substantially rehabilitated unit-based housing assistance. OHA shall certify to HUD that HUD site and neighborhood selection requirements have been met; provided, however, that in lieu of the Site and Neighborhood Standards currently set forth in 24 CFR Section 941.202(b)-(d) and in 24 CFR Section 983.6, OHA will comply with the following requirements:

- Units may be located in OHA's jurisdiction, including within, but not limited to, the following types of urban areas: (i) an area of revitalization that has been designated as such by the City of Oakland, including Redevelopment Areas and Enhanced Enterprise Communities, (ii) an area where public housing units were previously constructed and were demolished, (iii) a racially or economically impacted area where the assisted units are part of an OHA strategy to preserve existing affordable

housing, (iv) an area where the Authority is undertaking a HOPE VI or other HUD-funded, master-planned development, (v) an area where a needs analysis indicates that subsidized housing represents a low percentage of the total number of housing units, or, (vi) an area with a low concentration of public housing units where existing public housing units are being relocated.

- Conduct a housing needs analysis indicating that there is a real need for the housing in the area;
- When project-based assistance will be used to develop or substantially rehabilitate six or more public housing units, OHA will: (i) consult with public housing residents through appropriate resident organizations and representative community groups in the vicinity of the subject property during the planning; (ii) advise current residents of the subject properties (“Residents”) and public housing residents, by letter to resident organizations and by public meeting, of OHA’s revitalization plan; and (iii) certify to HUD in its MTW Annual Report that the comments from Residents, public housing residents and representative community groups have been considered in the revitalization plan. Documentation evidencing that OHA has met the stated requirements will be maintained at the housing authority and submitted to HUD in its MTW Annual Report.

### **17–II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

OHA 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 (NEPA) of 1969 (42 U.S.C. 4321 et seq.). OHA 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.

OHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and OHA, 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.

OHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. OHA 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 HQS/NSPIRE standards for the tenant-based program, including those for special housing types, generally apply to the PBV program.

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

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

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227 apply to the PBV program.

### **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. OHA 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)]**

OHA must examine the proposed site before the proposal selection date.

#### **Inspection of Existing Units**

If the units to be assisted already exist, OHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS/NSPIRE standards. To qualify as existing housing, units must substantially comply with HQS/NSPIRE standards on the proposal selection date. However, OHA may not execute the HAP contract until the units fully comply with HQS/NSPIRE standards unless OHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions.

#### **Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]**

OHA must inspect each contract unit before execution of the HAP contract. OHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS/NSPIRE standards unless OHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS/NSPIRE inspection as a result of only non-life-threatening conditions.

#### **OHA Policy**

OHA may enter into a HAP contract for units that fail the initial HQS/NSPIRE standards inspection as a result of only non-life-threatening conditions.

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

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

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

At least once every 24 months during the term of the HAP contract, OHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS/NSPIRE standards. Turnover inspections are not counted toward meeting this inspection requirement. OHA also has the option in certain mixed finance properties to rely on alternative inspections conducted at least triennially.

#### **OHA Policy**

Under MTW Authority, OHA may elect to utilize HQS/NSPIRE standards inspection protocols developed under MTW authority for tenant-based voucher assistance in lieu of the inspection requirements detailed above.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, OHA must re-inspect 100 percent of the contract units in the building.

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

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

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

In conducting PHA supervisory quality control HQS/NSPIRE inspections, OHA should include a representative sample of both tenant-based and project-based units.

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

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by OHA and approved by HUD. The independent entity must furnish a copy of each inspection report to OHA and to the HUD field office where the project is located. OHA 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 OHA-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.

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

In order to offer PBV assistance in rehabilitated or newly constructed units, OHA 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)]. OHA may not enter into an Agreement if construction or rehabilitation

has started 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/NSPIRE standards, and OHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, OHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

### **OHA Policy**

Under MTW Authority, OHA may modify the terms and content of the agreement to reflect conditions granted under MTW authority. OHA may also create its own Project-Based Voucher Program Agreement and Contract to be used for PBV assistance awarded as Sponsor Based Housing.

### **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:

1. Site and the location of the contract units;
2. Number of contract units by area (size) and number of bedrooms and bathrooms;
3. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
4. 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;
5. 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;
6. Estimated initial rents to owner for the contract units;
7. 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 OHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
8. Any additional requirements for quality, architecture, or design over and above HQS/NSPIRE standards.

## **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. OHA 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 OHA in the form and manner required by OHA:

- Owner certification that the work has been completed in accordance with HQS/NSPIRE standards 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 OHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

### **OHA Policy**

OHA requires a (temporary) certificate of occupancy from the City of Oakland as evidence of completion prior to entering into a HAP contract.

### **OHA Acceptance of Completed Units [24 CFR 983.156]**

Upon receipt of a (temporary) certificate of occupancy,, OHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS/NSPIRE standards and any additional requirements imposed under the Agreement. OHA 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, OHA must not enter into the HAP contract. If OHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, OHA 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**

OHA 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. The HAP contract must be in the form required by HUD [24 CFR 983.202].

### **OHA Policy**

Under MTW Authority, OHA may modify the terms and content of the HAP contract to reflect conditions granted under MTW authority.

## **17-V.B. HAP CONTRACT REQUIREMENTS**

### **Contract Information [24 CFR 983.203, FR Notice 11/24/08]**

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, and any other information necessary to clearly identify the site and the building;
- 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 be set-aside for occupancy by qualifying families (e.g., senior, disabled, HOPWA, MHSA); and
- The initial rent to owner for the first 12 months of the HAP contract term.
- OHA administrative plan chapter 17
- Owner's certification of and notification of completion
- Certificate of occupancy
- Certification of completion from inspecting architect
- Evidence of site ownership
- Site management agreement
- HQS/NSPIRE standards inspection report for every unit covered by the HAP contract
- Site-based waiting list management plan – if applicable
- Sample residential lease agreement and HUD PBV tenancy Addendum (MTW version)
- Consent to assignment of HAP contract
- Renewal agreement – if applicable

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

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the HQS/NSPIRE standards.

### **Term of HAP Contract [24 CFR 983.205; FR Notice 1/18/17]**

OHA may enter into a HAP contract with an owner for an initial term of no less than one (1) year and no more than twenty (20) years. Additionally, for any PBV HAP contract that is still within the initial term, OHA and the owner may mutually agree to extend the contract for up to the maximum initial term of 20 years.

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

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

The maximum combined terms of the HAP contract may not exceed 40 years.

### **OHA Policy**

The term of a PBV HAP contract will be negotiated with the owner on a case-by-case basis. The HAP contract will include language noting that the funding of the contract is subject to the availability of Appropriations. OHA may enter into a new PBV HAP contract with an owner with an initial term of up to twenty (20) years and for HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extensions) may not exceed 40 years.

### **HAP Contract Renewal Agreement**

OHA may enter into a renewal agreement with the owner at the time it enters into the initial agreement for a housing assistance payment contract or at any time thereafter that is before the expiration of the housing assistance payment contract. A renewal agreement may commit an extension for a renewal term of up to twenty (20) years or the maximum allowed in accordance with federal regulations if it is greater than 20 years. A renewal agreement will include language noting that the funding of the contract renewal is subject to the availability of Federal Appropriations.

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

The HAP contract must provide that the term of OHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by OHA 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 OHA first take all cost-saving measures prior 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, OHA 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 OHA. 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; 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 OHA 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. For families who wish to remain at the property, the HCV tenant-based assistance would not begin until the owner's required notice period ends.

Upon termination or expiration of the contract without extension, an assisted family may elect to remain in its unit and use the assistance previously provided under the contract, as long as the unit meets HUD's housing quality standards and the rent for the unit is reasonable. In such a circumstance, the family may choose to move or to remain in the unit. If the family remains, it will pay its required share of the rent in addition to the amount, if any, by which the gross rent exceeds the applicable payment standard. A family that remains in its unit with continued tenant-based HCV assistance must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount by which the unit rent exceeds the applicable payment standard.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to OHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income. The family does not count toward OHA's income-targeting requirements at 24 CFR §982.201(b)(2)(i).

### **Effective date of HCV HAP and family leases.**

The transition from PBV HAP units to HCV HAP units will require OHA and owner to plan to assure continued payments for families under lease and continued payments to the owner of units under HAP. The following requirements apply:

1. OHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the PBV contract termination or expiration date.
2. OHA may not commence the tenant-based HCV housing assistance payment to an owner until the HCV tenant-based HAP contract has been executed.
3. The HCV HAP contract may not be executed before OHA approves the assisted tenancy in accordance with 982.305. An HCV HAP contract for a family must be executed no later than 60 calendar days from the start of the family's lease. As long as the HCV HAP contract is executed during the 60-day grace period, once it has been executed, OHA may pay the owner retroactively to the start date of the family's lease term. (4) If the HCV HAP contract has a different rent than did the PBV HAP contract, and the new rent is determined by OHA to be reasonable, then OHA will use the new gross rent to calculate the family's HCV HAP going forward. The family will be responsible for paying the new family rent to owner starting from the effective date of the HCV HAP contract.

### **Remedies for HQS/NSPIRE Standards Violations [24 CFR 983.208(b)]**

OHA 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/NSPIRE standards. If OHA determines that a contract does not comply with HQS/NSPIRE standards, OHA 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.

#### **OHA Policy**

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

### **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

#### **Substitution of Contract Units [24 CFR 983.207(a) as amended by MTW]**

At OHA'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, OHA must inspect the proposed unit and determine the reasonable rent for the unit.

### **OHA Policy (MTW)**

OHA may substitute (float) a project-based-voucher contract unit for a different unit in the projects at any time during the initial term or any extension term of the HAP contract. The substituted unit does not have to be a unit with the same number of bedrooms.

### **Addition of Contract Units [24 CFR 983.207(b) as amended by MTW]**

OHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, OHA must submit to the local field office information outlined in FR Notice 1/18/17. OHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

### **OHA Policy**

Under MTW authority, OHA is not subject to program or project limits.

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

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

Under MTW authority, the HAP contract may be amended at any time during the initial term of the HAP contract, or any renewal term of the HAP contract.

### **Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance**

At the option of the project owner and tenant, an applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, TPV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions.

### **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–V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [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/NSPIRE standards;
- 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 OHA, 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. (does not apply to family's membership in a cooperative); and
- 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–V.F. ADDITIONAL HAP REQUIREMENTS**

### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]**

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

OHA 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/NSPIRE standards.

#### **OHA Policy**

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

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

At the discretion of OHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by OHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

### **OHA Policy**

The OHA will decide if OHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the basis of the vacancy payment and the period for which the owner will qualify for these payments.

The amount of vacancy loss payments may not exceed two full calendar months after the move out month. The owner may also retain the HAP payment for the entire month in which the family moved out.

## **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)]**

OHA may select families for the PBV program from those who are participants in the 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 re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

### **OHA Policy**

OHA may select families for the PBV program from those who are:

1. Participants in a OHA's tenant-based voucher program,
2. Residing in the proposed PBV contract unit on the date the proposal is awarded,
3. From those who have been selected for admission to OHA's tenant-based voucher program,
4. From those who have applied for housing at a PBV site where a separate site-based waiting list has been established specifically for the tenanting of units within the development.
5. From those who are in-place public housing conversion families in good standing.
6. Graduates from an OHA short-term transitional housing program with supportive services, including PACT, Building Bridges, Sponsor Based Housing Assistance Program (SBHAP), and any other approved program.

For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined 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. Applicants must qualify as a family as defined by HUD and OHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to OHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

### **OHA Policy**

A family selected from an owner administered site-based waiting list must be referred to OHA for determination of the family's eligibility for the PBV program. To minimize duplication of the applicant qualification process, if a family's income was verified by the owner as a requirement of participation in another low-income program committed to the project, OHA may use copies of the family information regarding income, expenses and family composition including certification of 3rd party verifications collected by the owner, for determination of family eligibility for the PBV program. **Any family documentation received from a PBV site owner must be dated within 120 days of a family's application date.** OHA may elect to re-verify any information as needed.

Families selected for the PBV program must meet all OHA's screening criteria (e.g., income, criminal background, etc.) prior to receiving a project-based assistance.

### **In-Place Families**

An eligible family residing in a proposed PBV contract unit on the date the proposal is awarded by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV program.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the PBV program.

### **OHA Policy (MTW)**

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 awarded, the in-place family must be referred to the OHA for determination of eligibility.

The owner may:

- Relocate the family to an appropriately sized PBV unit within the development, or
- Place the family on the PBV site-based waiting list for an appropriate sized unit.

In accordance with MTW Activity #10-05, OHA, a landlord, or a management agent may allow an exception to this policy and admit a family in the wrong sized unit if the owner agrees to accept a PBV contract rent that does not exceed the OHA subsidy (voucher payment) standard approved for the in-place family. (see policy 17-VII.C. MOVES)

### **Public Housing Conversions/Dispositions**

In-place public housing conversion families are continuously assisted applicants since the family is currently receiving assistance under a 1937 Housing Act program (24 CFR 982.201(d)(1)). The family is therefore not subject to the new admissions criteria for program eligibility and admission to the Section 8 PBV program.

Under MTW authority, an in-place public housing conversion family may be admitted as a Section 8 PBV program participant. If an in-place public housing conversion family is admitted directly to the PBV program,

the family is exempt from the 12 month minimum stay requirement and may immediately request to move with continued assistance under the Section 8 MTW Housing Choice Voucher program.

In-place public housing conversion families may also be admitted by Special Admission to the Housing Choice Voucher program if HUD has awarded tenant protection funding for specifically-named families living in specified units (Section 4-III.B.).

### **OHA Policy**

An in-place public housing conversion family that is not in an appropriately sized unit when the development is selected for conversion will be admitted to the Section 8 program with HUD awarded tenant protection funding.

A family occupying a unit awarded PBV assistance (see 17-V.C. Suspend PBV Awarded Contract Units for applicants with Tenant-Based Assistance suspended), with a tenant-based assistance is subject to all policies applicable to a PBV assisted family occupying a wrong size unit, based on the PHA's subsidy standards for PBV program units, or a unit with accessibility features that the family does not require (See Section 17-VII,C – Moves).

The family will be provided 120 days to utilize the Tenant Protection Voucher (TPV) in an open market unit. If the TPV is not utilized during the maximum search period the families assistance will convert to Project Based Voucher program rules and the unused tenant based voucher will be forfeited. Extensions for use of the tenantprotection voucher will be based on a the family's written request and may include requests for reasonable accommodations but shall not exceed a maximum cumulative total of 180 days.

### **Transitional/Conditional Housing Programs [OHA MTW Annual Plan]**

Under MTW Activity #11-05, OHA may develop and adopt new short-term transitional housing programs in partnership with supportive services provided by local community-based organizations or other local government agencies. These programs, which include comprehensive supportive services, operate under a Memorandum of Understanding (MOU) executed between OHA, other local government agencies, and/or third party service providers. OHA may administer these units under the programs such as PACT or Building Bridges CalWORKS Program and successful participants may be eligible to "graduate" and be admitted to OHA's Public Housing, Housing Choice Voucher or the Project-based Voucher program(s), subject to funding availability and availability of an appropriate unit size for the family.

### **Neighborhood Orientation Workshop (MTW)**

The Neighborhood Orientation Workshop is an MTW initiative which is intended to provide new Section 8 Program participants with access to information needed to become successful tenants and responsible members of their community. OHA will utilize a third party contractor to conduct the workshops. The third party contractor will be selected based on their knowledge of the local market area and their expertise in marketing, outreach, communication, popular education, and other successful strategies for working with low-income households and individuals. Upon completion, attendees will receive a certificate of completion.

### **OHA Policy**

The Head of Household in a Project Based Voucher program unit (including all public housing conversion families), must attend a Neighborhood Orientation Workshop, as a part of the Section 8 briefing process (see Section 5-I.B.) prior to being issued an HCV tenant-based voucher. All other responsible adult family members in the applicant family household will be encouraged, but are not be required to attend a workshop session. A Project-Based Voucher program family will not be allowed to move with tenant based HCV assistance until the Head of Household has attended a Neighborhood Orientation Workshop.



An exception to this policy will be granted if the participant family has attended a Neighborhood Orientation Workshop (or comparable OHA workshop) within the last five (5) years.

Other exceptions will be considered on a case-by-case basis subject to the approval by the Director of Leased Housing and for circumstances involving a reasonable accommodation for a person with a disability, upon approval by the Reasonable Accommodation Compliance Committee.

## **17–VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); MTW Annual Plan]**

OHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. OHA may also merge the PBV waiting list with a waiting list for other assisted housing programs. If OHA chooses to offer a separate waiting list for PBV assistance, it must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If OHA decides to establish a separate PBV waiting list, it may use a single waiting list for the whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

### **OHA Policy**

Under MTW Activity #06-01, OHA may authorize owner administered site-based waiting lists for individual buildings, projects or group of projects that receive PBV assistance. The PBV waiting list may be combined with the a site-based waiting list for public housing units, other affordable non-section 8 units, or units set aside for special needs populations in the development. The waiting list may come from outreach efforts conducted by the property owner/manager. In creating the PBV site-based waiting list, the owner/manager must comply with OHA’s marketing outreach policies (see Sections 4-II.C and 4-II.D.) when advertising the availability of project-based voucher assisted units. The owner must notify OHA in advance of reopening the waiting list. OHA will post notification of the opening of a site-based waiting list used for tenanting PBV units, on the OHA web-site.

A property owner/manager may, but is not required to directly notify families on the OHA HCV tenant-based voucher waiting list of the opening of a PBV site-based waiting list. If requested, OHA will provide the owner/manager with a mailing list of families currently on the OHA HCV tenant-based voucher waiting list.

- A family that is on the OHA HCV tenant-based voucher waiting list may apply in response to owner outreach efforts and be placed on a PBV site-based waiting list.
- A family’s placement on one or more PBV site-based waiting lists does not impact the family’s position on the OHA HCV tenant-based voucher waiting list.
- A family’s refusal to accept a PBV unit, owner denial, or removal from a project-based voucher site-based waiting list does not jeopardized the family’s position on the OHA tenant-based voucher waiting list, see also 17-VI.E.

A family may only be removed from the OHA tenant-based voucher waiting list if they are selected and housed under the OHA project-based voucher program.

Owner developers awarded project-based voucher units must submit the following plans to OHA for review and approval prior to execution of an AHAP or HAP contract:

- Marketing Plan to describe marketing and outreach activities;
- Waiting List Management Plan which includes information related to accepting applications, random lottery procedures, procedures for rank order assignment and record keeping;

In approving the Waiting List and Tenant Selection Plans, OHA may require preferences up to and including an absolute preference for a public housing or Section 8 family that needs to be relocated. A family may need to be relocated to another PBV unit under certain circumstances such as:

- Over-Housed or Under-Housed
- Current unit removed from PBV Contract
- High-Priority Relocation where there is a verified medical problems of a serious or life-threatening nature or a verified threat of physical harm or criminal activity specifically directed to the family
- Reasonable Accommodation

## **17–VI.D. SELECTION FROM THE WAITING LIST AND DETERMINING UNIT SIZE**

### **[24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the applicable waiting list. OHA may establish selection criteria or preferences for occupancy of particular PBV units. OHA 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 OHA’s tenant-based and project-based voucher programs during the 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, OHA must first refer families who require such features to the owner.

### **OHA Policy**

Applicants who will occupy units with PBV assistance must be selected from:

- A PBV owner administered site-based waiting lists authorized by OHA, or
- OHA’s HCV tenant based voucher waiting list.

OHA may establish selection criteria or preferences for occupancy of particular PBV units. Under MTW authority with approval from the Executive Director on a case by case basis, OHA may allow inter-program moves and transfers between the public housing, Housing Choice Voucher, or Project-based Voucher programs, if there are PBV units or HCV available and the resident is eligible for the relevant program. OHA may also allow participants of local, non-traditional programs to transfer to the PBV program provided that the family has met the program guidelines specified in the local program. This policy is authorized under Attachment C, Section D.4. of the Amended and Restated Moving to Work Agreement.

### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

OHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. OHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B.

OHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the MTW Annual Plan. OHA may not, however, grant a preference to a person with a specific disability. [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If OHA has projects with “excepted units” for elderly families or supportive services, OHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

### **OHA Policy**

A PBV site-based waiting list may use the same selection preferences that are used by OHA for the HCV tenant-based voucher program or may establish selection criteria or preferences independently for occupancy of particular units in a PBV development.

OHA may also refer a family to an OHA contracted PBV development where the owner is authorized to administer a PBV site-based waiting list. The owner must provide the family with absolute preference for the next available appropriately-sized PBV assisted unit. (See Section 17-VII.C (Moves-Overcrowded, Under-Occupied, and Accessible Units). A family granted an absolute preference to move is still subject to owner screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE)

### **PBV Site-Based Waiting List Oversight and Auditing**

#### **OHA Policy**

OHA will perform or witness any random lottery and/or rank order assignments the owner uses to create or when reopening a PBV site-based waiting list. A hard copy original (or a read-only electronic version) of the site-based waiting list will be kept on file at the OHA office.

OHA will audit site-based waiting list after the initial lease up and any time during the duration of the HAP contract. OHA will review waiting list management and tenant selections to insure that written procedures and preference were followed in selecting tenants for PBV assisted units.

### **Determining Family Unit Size for Project Based Voucher Assisted Units (24 CFR 983.253)**

The contract unit leased to each family must be appropriate for the size of the family under OHA’s subsidy standard.

#### **OHA Policy**

Under MTW activity #11-01, OHA may establish a separate Project Based Voucher Program occupancy standard table that will determine the appropriate number of bedrooms needed for families of different sizes and compositions to be consistent with the occupancy standards required by other state or locally-administered funding sources in a development. PBV program occupancy standards may differ from the occupancy standards use for determining the voucher size for applicant and participant families in the tenant based, Housing Choice Voucher Program (5-II.B.). However, if separate PBV occupancy standard has not been established prior to the execution of the Housing Assistance Payment contract, the occupancy standard will be the same as the tenant-based subsidy standard as described in this Administrative Plan Chapter 5, section II.B)

When PBV assistance is attached to units developed or rehabilitated with other state or locally administered affordable housing funds, the occupancy standards applicable to those other programs may differ from the subsidy standard used for the PBV program. This creates certain circumstances whereby a family of a particular size or composition, will qualify for a specific unit that was developed with Tax Credit (LIHTC) or HOME program funding, but is not eligible for PBV assistance in that same sized unit. OHA may adjust the applicable PBV program subsidy standard at certain PBV developments or for the PBV program in its entirety to increase access and expand housing opportunities for participants.

**For Project Based Voucher units, the occupancy standard will be the same as the tenant-based subsidy standard unless a separate Project-Based Voucher program occupancy standard table has been established prior to the execution of a HAP contract, based on MTW activity #11-01.**

When a family's subsidy standard becomes less than the PBV unit size during the course of the tenancy, either as a result of public housing disposition or a change in household composition, MTW Activity #10-05 allows OHA to opt to accept a lower HAP to house families in units when there are no families on the waitlist that qualify for the size units that are available under. The landlord or management agent may accept a lower HAP based on the appropriate number of bedrooms for the family as opposed to the actual number of bedrooms in the unit.

The following requirements apply when OHA determines the family unit size:

- The PBV program occupancy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The PBV program occupancy standards must be consistent with space requirements under the housing quality standards.
- The PBV program occupancy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family member who is temporarily away from the home to attend school is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by OHA to reside in the unit, see 3-I.M.) must be counted in determining the family unit size.
- Live-in aides will be allocated a separate bedroom.

If the family moves from the PBV assisted unit and converts to the HCV tenant based program assistance, the family's HCV voucher size will be based on the applicable HCV program subsidy standard (see 5-II.B.).

## **17–VI.E. OFFER OF PBV ASSISTANCE**

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

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

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

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

If a PBV owner rejects a family for admission to the owner's units, such rejection will not affect the family's:

- Position on OHA tenant-based voucher waiting list
- Occupancy in their current PBV assisted unit

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

A family that is also on OHA HCV tenant-based voucher waiting list will be removed from the HCV list if they accept an offer and are housed under the OHA project-based voucher program.

### **Family Briefing [24 CFR 983.252]**

When a family accepts an offer for PBV assistance, OHA 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, OHA must provide a briefing packet that explains how OHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

### **Persons with Disabilities**

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

### **Persons with Limited English Proficiency**

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

## **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.

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

During the term of the HAP contract, the contract unit leased to the family must be the appropriate size unit for the size of the family, based on the OHA's subsidy standards. Exceptions will be considered on a case by case basis for in-place families at initial lease up (see 17-VI.B. In-Place Families).

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

The owner must promptly notify OHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, OHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. OHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy. The unit must be filled by a referral from OHA or the next eligible family on the site-based waiting list.

### **OHA Policy**

The owner must notify OHA in writing (mail, fax, or e-mail) within 10 business days of learning about any vacancy or expected vacancy.

OHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

An applicant that has OHA administered tenant-based Section 8 assistance may utilize their tenant-based assistance (e.g. HCV, VASH, Mainstream etc.) in the PBV unit. OHA will suspend the PBV award to the unit in the project's HAP contract until the unit becomes available for the next eligible applicant during the term of the HAP contract or any approved extensions. (see 17-V.C. Suspending Contract Units for applicants with Tenant-Based Assistance)

Under the circumstances described in Section 17-VII.C (Moves- Overcrowded, Under-Occupied, and Accessible Units), OHA may refer a family to an OHA PBV development where the owner is authorized to administer a PBV sited-based waiting list. The owner must provide the family with absolute preference for the next available appropriately sized PBV assisted unit. However, a family granted an absolute preference to move is still subject to owner screening requirements and offer of a PBV assisted unit (see 17-VI.E. OFFER OF PBV ASSISTANCE).

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

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

##### **OHA Policy**

If any contract units have been vacant for 120 days, OHA may give 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. A reduction in the number of HAP contract units will be reviewed by OHA on a case by case basis. A unit may be allowed to remain vacant for over 120 days subject to good faith efforts by the owner to fill the vacancy. If OHA decides to remove a unit by amending the HAP contract, OHA will provide the notice to the owner within 10 business days, after the 120th day of vacancy. The amendment to the HAP contract will be effective on the 1st day of the month following the date of OHA's notice.

OHA will take steps to enforce the contract if it appears that the owner is maintaining vacancies intentionally to get out of contract obligations.

#### **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

##### **OHA Responsibility**

OHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, OHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

##### **OHA Policy**

OHA will not conduct screening to determine a PBV applicant family's suitability for tenancy. OHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by OHA) of the family's current landlord and any prior landlords.

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

OHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

##### **OHA Policy**

OHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS/NSPIRE inspection or before. OHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc. OHA follows the city of Oakland's Ronald V. Dellums and Simarashe Sherry Fair Chance Access to Housing Ordinance No. 13581 C.M.S. (O.M.C. 8.25) and limits the criminal background screening to:

- Persons subject to lifetime sex offender registration (42 U.S.C. Sec. 13663(a))
- Persons convicted of manufacturing methamphetamine on federally-assisted housing property (24 C.F.R. Sec. 982.553)

### **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:

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

## **PART VII. OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the site based waiting list, determined eligible by OHA, 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.

#### **OHA Policy**

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

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

- The lease for a PBV unit must specify all of the following information:
- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and

- The amount of any charges for food, furniture, or supportive services.

### **OHA Policy**

If a lease is executed for a unit with accessibility features that the family does not require, the lease agreement must contain language or a lease addendum notifying the family that they may be required to move to another unit (with continued assistance) if the unit is needed by a family that does require the features (Section 17-VIII.C.).

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

The tenancy addendum in the lease must state:

1. The program tenancy requirements;
2. The composition of the household as approved by OHA (the names of family members and any OHA-approved live-in aide);
3. 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)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

1. The owner terminates the lease for good cause
2. The tenant terminates the lease
3. The owner and tenant agree to terminate the lease
4. OHA terminates the HAP contract
5. OHA terminates assistance for the family

### **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 OHA a copy of all changes.

The owner must notify OHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by OHA and in accordance with the terms of the lease relating to its amendment. OHA must re-determine 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 re-determined 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]**

The owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 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 Unit [24 CFR 983.256(g) and 982.312(a)]**

The lease may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by OHA 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. OHA 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.

### **OHA Policy**

Absent family members in PBV assisted units are subject to the same standards applicable to tenant-based voucher program participants as define in Section 3-I.L. - ABSENT FAMILY MEMBERS.

### **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 OHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

### **OHA Policy**

Under MTW Activity #10-02, OHA extends the period before HAP contract termination and notification of family termination from the program from 6 to 24 months for family's where tenant rent equals the rent to owner. If a participating family receiving zero assistance experiences a change in circumstances after the initial 6 months and before the expiration of the 24 month period that would result in a HAP payment to the owner, the family must notify OHA of the change and request an interim reexamination before the expiration of the 24 month period. This change cannot be due to a Prohibited Actions as detailed in Chapter 14, whereby family members voluntarily terminate employment for less than a 30-day period, establishing a pattern of reduced employment at the time of program termination.

### **Security Deposits [24 CFR 983.259]**

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

### **OHA Policy**

OHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner is subject to state and local law, regarding disposition of the security deposit. The OHA 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]**

If OHA determines that a family is occupying a wrong size unit, based on OHA's subsidy standards for PBV program units, 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, OHA must promptly notify the family and the owner of this determination, and OHA must offer the family the opportunity to receive continued housing assistance in another unit.

### **OHA Policy**

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

1. A PBV assisted unit in the same building or project;

2. A PBV assisted unit at another PBV development administered by OHA where the owner has been authorized to administer a site-based waiting list for PBV assisted units. The family may be referred to an owner administered sited-based waiting list with absolute preference for the next available appropriately sized PBV assisted unit;
3. A Public Housing unit or;
4. MTW Housing Choice Voucher tenant-based assistance.

If OHA offers the family another form of continued housing assistance that is not a tenant-based voucher, the family will be given 60 calendar days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not accept the offer, does not move out of the PBV unit within the 60-day time frame, or both, OHA will terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of the 60 day period and remove the unit from the HAP contract.

OHA will make any exceptions necessary to the 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency.

If OHA offers the family a MTW Housing Choice Voucher, OHA 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 OHA) 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, OHA must remove the unit from the HAP contract.

### **OHA Policy**

Under MTW Activity #10-05, the owner and OHA may waive this requirement by including a provision in the PBV HAP contract whereby the owner and OHA, agree to allow families to continue a tenancy in a PBV assisted, under-occupied (wrong sized) unit subject to the owner accepting a lower contract rent for an extension term of not less than one year. The extension term is renewable and will be reviewed annually at the family's anniversary date thereafter. The lower rent will be based on the actual OHA subsidy standard determined for the family when the family's subsidy standard is lower than the actual PBV unit size. The lower rent for the unit will be determined by the approved PBV rent schedule for smaller sized unit in the development. If there is no PBV rent schedule for the unit size at the development, then rent will be established based on the lower of:

- The appropriate tenant-based (HCV) payment standard for the family size,
- The reasonable rent for the unit.

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

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

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

### **OHA Policy**

In accordance with MTW Activity #11-02 and Activity #10-09, a family residing in a PBV unit may request a tenant-based voucher after occupying the PBV unit for at least two years (24 months). A household must complete the first 24 months of occupancy in the assisted PBV unit before it is eligible to request to move with a tenant-based voucher. If the family moves or terminated the PBV assisted

tenancy before the end of the 24-months of occupancy, the family relinquishes the opportunity to request any tenant-based assistance. If no tenant-based Housing Choice Voucher is immediately available, the eligible PBV household may be added to the transfer waitlist.

To preserve the status of the Section 8 tenant-based waiting list, the OHA must issue at minimum, one (1) Section 8 MTW Housing Choice Voucher the next eligible family on the tenant-based voucher waiting list, for each HCV that is issued to a project-based voucher family that is requesting to move with continued tenant-based assistance under the HCV program. If no tenant-based vouchers are being issued, OHA will place the eligible PBV transfer family on a waiting list (if open) for the next available voucher based on the date and time of the family's request.

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

Except where special consideration is needed for the project-based voucher program, OHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that OHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

#### **OHA Policy**

When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, OHA will provide several options for continued assistance.

OHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where OHA has PBV units. OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for a transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in OHA's public housing program. Such a decision will be made by OHA based on the availability of tenant-based vouchers and/or vacancies in other units. Such families must be selected from the waiting list for the applicable program.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, OHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where OHA has PBV units. OHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to OHA's public housing program. OHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

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

OHA 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:

- The units are exclusively for elderly families
- Authorized by an MTW Activity
- 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

- For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

### **OHA Policy**

Under MTW Activity #12-01, OHA will not limit the number of total number of dwelling units (PBV Occupancy Cap) in a project that will receive PBV assistance during the term of the PBV HAP contract and may provide PBV assistance for up to 100% of units within a project.

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

### **17–VIII.A. 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. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined 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–VIII.B. RENT LIMITS [24 CFR 983.301]**

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

- The reasonable rent
- The rent requested by the owner
- The applicable Voucher Payment Standard for the unit based on the family's Subsidy Standard size minus any utility allowance.

### **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:

1. The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
2. The contract unit is not located in a qualified census tract;
3. There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
4. The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;
5. For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:
  - a. The tax credit rent minus any utility allowance
  - b. The reasonable rent
  - c. 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 project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

#### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

OHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If OHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

#### **OHA Policy**

OHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, OHA will use the higher initial rent to owner amount.

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

When determining the initial rent to owner, OHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, OHA 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 standard amount for use in the PBV program.

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

#### **OHA Policy**

The same utility allowance schedule and any utility allowance policies developed for the MTW tenant-based program, also apply to the project-based voucher program. Any alternate payment standards or exception payment standard hubs as authorized in the MTW Plan for the MTW tenant-based program may also apply to the project-based voucher program.

#### **Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, if OHA operates a tenant-based program under SAFMRs (either by HUD-designation or because OHA requested HUD approval to use SAFMRs) it may apply SAFMRs to all future PBV HAP contracts. If OHA adopts this policy, it must apply to all future PBV projects and OHA's entire jurisdiction. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy.

Further, OHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective dates of both the SAFMR designation and OHA administrative plan policy, provided the owner is willing to mutually agree to do so and the application is prospective. OHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if OHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

### **OHA Policy**

OHA will not apply SAFMRs to the PBV program.

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

OHA must re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

#### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from OHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by OHA. OHA 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).

### **OHA Policy**

An owner's request for a rent increase must be submitted to OHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. If a rent increase is approved, the adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

OHA 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/NSPIRE standards. 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 OHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

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

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

### **OHA Policy**

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

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

For OHA-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. OHA must use the rent to owner established by the independent

### **17–VIII.C. REASONABLE RENT [24 CFR 983.302]**

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 OHA, except where OHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### **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, OHA 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.

#### ***Initial Contract Rents***

##### **OHA Policy**

The initial contract rents for all PBV HAP contracts will be based on a market rent study performed by an appraiser.

The appraiser's market rent study used to determine initial contract rents for PBV program units may be based on a geographical area covering multiple sites or specific unit types located within that geographical area.

#### ***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 OHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

#### **OHA-owned Units**

For OHA-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 OHA-owned units to OHA 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, OHA 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]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding. 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:

1. An insured or non-insured Section 236 project
2. A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action
3. A Section 221(d)(3) below market interest rate (BMIR) project
4. A Section 515 project of the Rural Housing Service
5. 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, OHA 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/NSPIRE standards 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 OHA agree on a later date.

Except for discretionary vacancy payments, OHA 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 OHA 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 OHA determines that the vacancy is the owner's fault.

### **OHA Policy**

If OHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, OHA will notify the landlord of the amount of housing assistance payment that the owner must repay.

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

1. The owner gives the OHA 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)
2. 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
3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy
4. The owner provides any additional information required and requested by the OHA to verify that the owner is entitled to the vacancy payment

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

### **OHA Policy**

The owner may retain the HAP payment for the month in which the tenant moved out and OHA may make vacancy loss payments to the owner for up to two (2) full calendar months after the month in which the unit becomes vacant. Vacancy loss payments will be made in an amount equal to OHA's HAP for the family that last occupied that unit. The owner is not eligible to receive any vacancy loss payments beyond the second calendar month after the unit becomes vacant.

The owner will only receive the vacancy loss payment if the vacancy is not the owner's fault (e.g., tenant caused HQS/NSPIRE violations) and the owner has taken every action to minimize the likelihood and length of any vacancy.

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 OHA of the 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 PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by OHA within 10 business days of OHA's request, no vacancy payments will be made.

## **17-IX.C. TENANT RENT TO OWNER**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by OHA. Any changes in the amount of tenant rent will be effective on the date stated in the OHA 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 OHA 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 OHA. The owner must immediately return any excess payment to the tenant.

### **OHA Policy**

OHA may elect to utilize rent determination protocols developed under MTW authority for tenant-based voucher assistance for the determination of tenant rent to owner in project-based voucher program assisted units.

### **Tenant and OHA 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 OHA.

Likewise, OHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. OHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit.

### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, OHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

OHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If OHA chooses to pay the utility supplier directly, OHA must notify the family of the amount paid to the utility supplier.

### **OHA Policy**

In accordance with MTW Activity #15-02, OHA will not make utility reimbursements to or on behalf of the family.

## **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. Non-payment of such charges is not grounds for termination of tenancy.

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

### **Other Charges by Owner**

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

