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YHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the YHA has already taken or will take in the future.

YHA requests for approval of payment standards below 90 percent of the fair market rent (FMR) for any unit size may be approved by HUD field offices. However, 24 CFR 982.503(d) states that HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. This is a regulatory, not statutory, requirement. PHAs experiencing financial difficulties may request that HUD Headquarters waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants or withdrawing vouchers from families searching for housing without the proposed reduction in payment standards. Waiver requests should include an analysis by YHA on the impact the reduction in payment standards below the basic range will have on a family's opportunity to lease units throughout YHA's jurisdiction.

In determining whether to approve YHA requests for payment standard waivers of 24 CFR 982.503(d) or 982.505(c)(3), HUD will review and take into consideration YHA's current rent burden and the impact of the proposed change on YHA's participants. In addition, as a condition of the waiver approval, HUD may require YHA to raise payment standards and apply the new payment standard amounts immediately at such time that YHA receives additional funding.

### **Termination of Assistance Due to Insufficient Funding**

The regulation at 24 CFR 982.454 provides that YHA may terminate HAP contracts, in accordance with HUD requirements, if YHA determines that funding under the CACC is insufficient to support continued assistance for families in the program.

In determining if funding under the CACC is insufficient to support continued assistance for families in the program, YHA **must** take into consideration its available budget authority (which includes unspent prior year HAP funds in YHA's NRA account).

Before terminating HAP contracts on the basis of insufficient funding, the YHA must ensure that it has carefully considered all cost-savings measures and the impact such terminations will likely have on program applicants and participants. In addition, YHA is encouraged to utilize alternative sources of unrestricted non-Federal funding that may be available to prevent the termination of rental assistance. **YHA must notify the HUD field office and its financial analyst at the Financial Management Center (FMC) prior to termination actions due to insufficient funding.**

YHA termination policies due to insufficient funding must be included in the administrative plan. Such policies should describe how YHA will determine which HAP contracts will be terminated. Any YHA policies with respect to the resumption of assistance for the impacted families must also be included in the administrative plan. In setting such policies, YHA should

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be mindful of its obligation to affirmatively further fair housing pursuant to 24 CFR 982.53(c) and 24 CFR 903.7 (o).

### **Reasonable Accommodations**

Notwithstanding YHA's adoption of policies noted above to deny portability or moves within YHA's jurisdiction or revision of payment or subsidy standards, reasonable accommodation requests for a person's disability must still be evaluated in accordance with HUD's Section 504 implementing regulations at 24 CFR part 8. Such requests must be granted when an accommodation may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, unless it would impose an undue financial and administrative burden on YHA or fundamentally alter the nature of YHA's operations.

## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

When YHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

YHA is required to include in the administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

YHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the YHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures
- For victims of domestic violence covered by VAWA

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by YHA

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- General policy issues or class grievances
  - A determination of the family unit size under YHA's subsidy standards
  - A YHA determination not to grant approval of the tenancy
  - A YHA determination that the unit is not in compliance with the HQS
  - A YHA determination that the unit is not in accordance with the HQS due to family size or composition

#### YHA Policy

YHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on YHA's waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

YHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for YHA's decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

#### **Scheduling an Informal Review**

##### YHA Policy

A request for an informal review must be made in writing and delivered to YHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of YHA's denial of assistance.

YHA must schedule and send written notice of the informal review within 10 business days of the family's request.

#### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of YHA.

The person conducting the review will make a recommendation to YHA, but YHA is responsible for making the final decision as to whether assistance should be granted or denied.

#### **Informal Review Decision [24 CFR 982.554(b)]**

YHA must notify the applicant of the YHA's final decision, including a brief statement of the reasons for the final decision.

##### YHA Policy

In rendering a decision, YHA will evaluate the following matters:

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Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. YHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, YHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, YHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

YHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

YHA must offer an informal hearing for certain YHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to YHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether YHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and YHA policies.

YHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which YHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from YHA's utility allowance schedule

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- A determination of the family unit size under YHA's subsidy standards
  - A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the YHA's subsidy standards, or YHA's determination to deny the family's request for exception from the standards
  - A determination to terminate assistance for a participant family because of the family's actions or failure to act
  - A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under YHA policy and HUD rules
  - A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]
  - A determination that the family is an ineligible student under the student rule provisions
  - A determination that the family is not protected under the VAWA requirements.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by YHA
- General policy issues or class grievances
- Establishment of YHA's schedule of utility allowances for families in the program
- A YHA determination not to approve an extension or suspension of a voucher term
- A YHA determination not to approve a unit or tenancy
- A YHA determination that a unit selected by the applicant is not in compliance with the HQS
- A YHA determination that the unit is not in accordance with HQS because of family size
- A determination by YHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### YHA Policy

YHA will only offer participants the opportunity for an informal hearing when required by the regulations.

#### **Informal Hearing Procedures**

##### ***Notice to the Family* [24 CFR 982.555(c)]**

When YHA makes a decision that is subject to informal hearing procedures, YHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, YHA must notify the family that if they do not agree with the decision, they may request an informal hearing on the decision.

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For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to YHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

YHA Policy

In cases where YHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of YHA.

A brief statement of the reasons for the decision including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for YHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of YHA's hearing procedures

That persons with disabilities have the right to request a reasonable accommodation.

***Scheduling an Informal Hearing*** [24 CFR 982.555(d)]

When an informal hearing is required, YHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

YHA Policy

A request for an informal hearing must be made in writing and delivered to YHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of YHA's decision or notice to terminate assistance.

YHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, YHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact YHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. YHA will

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reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and YHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any YHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If YHA does not make the document available for examination on request of the family, YHA may not rely on the document at the hearing.

YHA's hearing procedures provide that YHA must be given the opportunity to examine at YHA offices before the hearing, any family documents that are directly relevant to the hearing. YHA must be allowed to copy any such document at YHA's expense. If the family does not make the document available for examination on request of YHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

YHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of YHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

YHA must be given an opportunity to examine at YHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, YHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 24 hours before the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by YHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

YHA Policy

YHA has designated the following to serve as hearing officers:

Designated YHA staff that are not subordinate to the person making the initial decision, but are knowledgeable of the program requirements.

***Attendance at the Informal Hearing***

YHA Policy

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Hearings may be attended by a hearing officer and the following applicable persons:

A YHA representative(s) and any witnesses for YHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by YHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with YHA's hearing procedures [24 CFR 982.555(4)(ii)].

### **YHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

YHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

### **YHA Policy**

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to YHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Evidence, including hearsay, is generally admissible.

If either YHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

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Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the family.

**YHA Policy**

In rendering a decision, the hearing officer will consider the following matters:

**YHA Notice to the Family:** The hearing officer will determine if the reasons for YHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if YHA and the family were given the opportunity to examine any relevant documents in accordance with YHA policy.

**YHA Evidence to Support YHA's Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support YHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and YHA policies. If the grounds for termination are not specified in the regulations or in compliance with YHA policies, then the decision of YHA will be overturned.

The hearing officer will issue a written decision to the family and YHA no later than 10 business days after the hearing. The decision will be sent via first class regular mail. The report will contain the following information:

**Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the YHA representative; and
- Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which

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is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold YHA's decision.

**Order:** The hearing report will include a statement of whether YHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct YHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct YHA to restore the participant's program status.

### ***Procedures for Hearing Extension***

#### **YHA Policy**

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of YHA will take effect and another hearing will not be granted.

Within 10 business days after the date of the hearing officers report is mailed to YHA and tenant, the HCV participant may request a rehearing or further hearings. Requests must be post marked or hand delivered within the 10 business day period. The request must demonstrate a cause for a rehearing, including specific reasons why the rehearing should be granted including references to the hearing officers report.

It is the sole discretion of YHA whether to grant or deny a rehearing.

#### ***YHA Notice of Final Decision [24 CFR 982.555(f)]***

YHA is not bound by the decision of the hearing officer for matters in which YHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If YHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, YHA must promptly notify the family of the determination and the reason for the determination.

#### **YHA Policy**

YHA will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail. A copy of the "Notice of Final Decision" will be maintained in YHA's file.

YHA is not bound by hearing decisions:

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- Concerning matters in which YHA is not required to provide an opportunity for a hearing;
  - Contrary to HUD regulations or requirements;
  - Contrary to Federal, State or local laws;
  - That exceed the authority of the person conducting the hearing.

YHA shall send a letter to the participant if it determines YHA is NOT bound by the Hearing Officer's determination within 10 business days. The letter shall include YHA's reasons for the decision.

#### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while YHA's hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or YHA's informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with YHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

#### **USCIS Appeal Process [24 CFR 5.514(e)]**

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When YHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, YHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide YHA with a copy of the written request for appeal and the proof of mailing.

#### YHA Policy

YHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide YHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to YHA, of its decision. When the USCIS notifies YHA of the decision, YHA must notify the family of its right to request an informal hearing.

#### YHA Policy

YHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

#### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that YHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of YHA's notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### ***Informal Hearing Officer***

YHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

#### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of YHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

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YHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of YHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by YHA, and to confront and cross-examine all witnesses on whose testimony or information YHA relies.

***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or YHA, as may be agreed upon by the two parties.

***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. YHA may, but is not required to provide a transcript of the hearing.

YHA Policy

YHA will not provide a transcript of an audio taped hearing.

***Hearing Decision***

YHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

**Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that YHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of YHA's notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

**Retention of Documents [24 CFR 5.514(h)]**

YHA must retain for a minimum of 5 years the following documents that may have been submitted to YHA by the family, or provided to YHA as part of the USCIS appeal or YHA's informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form

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- The USCIS verification results
  - The request for a USCIS appeal
  - The final USCIS determination
  - The request for an informal hearing
  - The final informal hearing decision

## **PART IV: OWNER OR FAMILY DEBTS TO YHA**

### **16-IV.A. OVERVIEW**

YHA is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to YHA [24 CFR 982.54]. This part describes YHA's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

#### YHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, YHA holds the owner or participant liable to return any overpayments to YHA.

YHA may enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. A repayment agreement may be executed depending on the type of fraud and the amount of monies owed to YHA.

When an owner or participant refuses to repay monies owed to YHA, YHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program
- Office of the Inspector General
- Office of the Attorney General

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to YHA**

#### YHA Policy

Any amount due to YHA by an owner must be repaid by the owner within 30 days of YHA's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, YHA will withhold the future HAP payments by the amount owed until the debt is paid in full.

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If the owner is not entitled to future HAP payments, YHA may offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, YHA will sanction the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to YHA**

#### YHA Policy

Any amount due to YHA by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, YHA may offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, YHA will terminate the assistance upon notification to the family and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal document signed by a tenant or owner and provided to YHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **Repayment Agreement Guidelines**

#### YHA Policy

A Payment Agreement, as used in this Plan, is a document entered into between YHA and a person who owes a debt to YHA. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to YHA upon default of the agreement.

- Amounts between \$2,000 and \$2,999 must be repaid within 18 months.
- Amounts between \$1,000 and \$1,999 must be repaid within 12 months.
- Amounts under \$1,000 must be repaid within 6 months.

### ***Execution of the Agreement***

#### YHA Policy

The head of household and spouse/co-head (if applicable) and YHA must sign the repayment agreement.

### ***Due Dates***

#### YHA Policy

All payments are due by the close of business on the 5<sup>th</sup> day of the month. If the 5<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 5<sup>th</sup>.

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***Non-Payment***

YHA Policy

A payment will be considered to be in arrears if:

- **The payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.**

If the family's payment agreement is in arrears for two consecutive months, YHA will:

- **Terminate tenancy**

If the family requests a transfer to another unit or program and has a payment agreement in place and the payment agreement is not in arrears:

- **The family will be required to pay the balance in full prior to the transfer.**

**Payment Schedule for Monies Owed to YHA**

There are some circumstances in which YHA will not enter into a payment agreement. They are:

- If the family already has a payment agreement in place.
- If YHA determines that the family has committed program fraud.

**Guidelines for Payment Agreements**

Payment agreements will be executed between YHA and the head of household only.

Monthly payments may be decreased in cases of hardship with the prior notice of the family, verification of the hardship. However, maximum time of 24 months will not be extended.

No transfer will be approved until the debt is paid in full unless the transfer is the result of the following causes, and the payment agreement is current:

- A natural disaster

**Additional Monies Owed**

If the family has a payment agreement in place and incurs an additional debt to YHA:

YHA will not enter into more than one payment agreement at a time with the same family.

***No Offer of Repayment Agreement***

YHA Policy

YHA will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution. *Note: If a family has entered into a previous repayment agreement, YHA will continue housing assistance if the family pays the balance within 30 days of notification of the retroactive rent assessment.*

**If the family refuses to sign a Repayment Agreement for changes it was required to report and didn't, it will be considered fraud.** In this case, YHA would terminate

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assistance for fraud, as long as the amount was verified. YHA may also consider local prosecution and, if the amount is \$10,000 or over, forward the case to the Regional Inspector General for Investigation.

If the family's assistance is terminated and repayment has not been made, the money will be considered to be owed and YHA may take action to collect the amounts owed.

YHA shall enter into the HUD database if any family has violated the conditions of the program and YHA has issue an EOP on the family. Any balance owed will be entered into the database (EIV)

## **PART V: MANAGEMENT ASSESSMENT (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure YHA's performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect YHA in several ways.

- High-performing PHA can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHA with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHA with an overall rating of "troubled" are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHA that are designated "troubled" may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

YHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by YHA's board resolution and signed by YHA's executive director. If the YHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

A PHA with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHA annually if the PHA elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of YHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

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YHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the YHA's SEMAP certification, HUD will rate the YHA's performance under each SEMAP indicator in accordance with program requirements.

**HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. YHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify YHA's certification on the indicator due to YHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

**16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

| <b>SEMAP Indicators</b>   |
|---|
| <p><b>Indicator 1: Selection from the waiting list</b><br/><b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>                                 |
| <p><b>Indicator 2: Rent reasonableness</b><br/><b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul> |
| <p><b>Indicator 3: Determination of adjusted income</b><br/><b>Maximum Score: 20</b></p>  |

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| <ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li><li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.</li></ul>   |
| <p><b>Indicator 4: Utility allowance schedule</b><br/><b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li><li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.</li></ul>  |
| <p><b>Indicator 5: HQS quality control inspections</b><br/><b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.</li><li>• Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.</li></ul>   |
| <p><b>Indicator 6: HQS enforcement</b><br/><b>Maximum Score: 10</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.</li><li>• Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.</li></ul>   |
| <p><b>Indicator 7: Expanding housing opportunities</b><br/><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"><li>• Only applies to PHA with jurisdiction in metropolitan FMR areas.</li><li>• This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.</li><li>• Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.</li></ul> |
| <p><b>Indicator 8: FMR limit and payment standards</b><br/><b>Maximum Points: 5 points</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.</li><li>• Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.</li></ul>   |

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**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up**

**Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the PHA, according to data from the PHA's last year-end operating statement that is recorded in HUD's accounting system.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**

**Maximum Points: 10**

- Only applies to PHA with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders**

**Maximum Points: 5**

- Only applies to PHA that have received approval to establish success rate payment

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standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

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**Deconcentration Bonus Indicator**

**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50<sup>th</sup> percentile.
- Additional points are available to PHA that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

**PART VI: RECORD KEEPING**

**16-VI.A. OVERVIEW**

YHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, YHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

**16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, YHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, YHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;

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- Lead-based paint records as required by 24 CFR 35, Subpart B.
  - Accounts and other records supporting YHA's budget and financial statements for the program;
  - Records to document the basis for YHA's determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
  - Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

## **16-VI.C. RECORDS MANAGEMENT**

YHA must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### YHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized YHA staff.

YHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or YHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

YHA that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System PHA Security Procedures*.

### YHA Policy

YHA has adopted and implemented EIV security procedures as required by HUD.

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### **Criminal Records**

YHA may only disclose the criminal conviction records which YHA receives from a law enforcement agency to officers or employees of YHA, or to authorized representatives of YHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

YHA must establish and implement a system of records management that ensures that any criminal record received by YHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to YHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

YHA must establish and implement a system of records management that ensures that any sex offender registration information received by YHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to YHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by YHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

YHA is not permitted to inquire about the nature or extent of a person's disability. YHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If YHA receives a verification document that provides such information, YHA should not place this information in the tenant file. YHA should destroy the document.

### **Specific Guidance on Protecting Sensitive Privacy Information**

The Privacy Act requires that federal agencies maintain only such information about individuals that is relevant and necessary to accomplish its purpose. The Privacy Act also requires that the information be maintained in systems or records – electronic and paper – that have the appropriate administrative, technical, and physical safeguards to protect the information, however current. This responsibility extends to contractors and third party business partners, such as YHA, who is required to maintain such systems of records by HUD.

- a) YHA should take the following steps to help ensure compliance with these requirements:
  - i) Limit Collection of PII
    - (1) Do not collect or maintain sensitive PII without proper authorization. Collect only the PII that is needed for the purposes for which it is collected.
  - ii) Manage Access to Sensitive PII

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- (1) Only share or discuss sensitive PII with those personnel who have a need to know for purposes of their work. Challenge anyone who asks for access to sensitive PII for which you are responsible.
  - (2) Do not distribute or release sensitive PII to other employees, contractors, or other third parties unless you are first convinced that the release is authorized, proper and necessary.
  - (3) When discussing sensitive PII on the telephone, confirm that you are speaking to the right person before discussing the information and inform him/her that the discussion will include sensitive PII.
  - (4) Never leave messages containing sensitive PII on voicemail.
  - (5) Avoid discussing sensitive PII if there are unauthorized personnel, contractors, or guests in the adjacent cubicles, rooms, or hallways who may overhear your conversations.
  - (6) Hold meetings in a secure space (i.e., no unauthorized access or eavesdropping possible) if sensitive PII will be discussed and ensure that the room is secured after the meeting.
  - (7) Treat notes and minutes from such meetings as confidential unless you can verify that they do not contain sensitive PII.
  - (8) Record the date, time, place, subject, chairperson, and attendees at any meeting involving sensitive PII.
- iii) Protect Hard Copy and Electronic Files Containing Sensitive PII
- (1) Clearly label all files containing sensitive PII by placing appropriate physical labels on all documents, removable media such as thumb drives, information systems, and application. Examples of appropriate labels might include —For Official Use Only|| or —For (Name of Individual/Program Office) Use Only.||
  - (2) Lock up all hard copy files containing sensitive PII in secured file cabinets and do not leave unattended.
  - (3) Protect all media (e.g., thumb drives, CDs, etc.) that contain sensitive PII and do not leave unattended. This information should be maintained either in secured file cabinets or in computers that have been secured.
  - (4) Keep accurate records of where PII is stored, used, and maintained.

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- (5) Periodically audit all sensitive PII holdings to make sure that all such information can be readily located.
  - (6) Secure digital copies of files containing sensitive PII. Protections include encryption, implementing enhanced authentication mechanisms such as two-factor authentication and limiting the number of people allowed access to the files.
  - (7) Store sensitive PII only on workstations that can be secured, such as workstations located in areas that have restricted physical access.
- iv) Protecting Electronic Transmissions of Sensitive PII via fax, email, etc.
- (1) When faxing sensitive PII, use the date stamp function, confirm the fax number, verify that the intended recipient is available, and confirm that he/she has received the fax. Ensure that none of the transmission is stored in memory on the fax machine, that the fax is in a controlled area, and that all paper waste is disposed of properly (e.g., shredded). When possible, use a fax machine that uses a secure transmission line.
  - (2) Before faxing PII, coordinate with the recipient so that the PII will not be left unattended on the receiving end.
  - (3) When faxing sensitive PII, use only individually-controlled fax machines, not central receiving centers.
  - (4) Do not transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information.
  - (5) When sending sensitive PII via email, make sure both the message and any attachments are encrypted.
  - (6) Do not place PII on shared drives, multi-access calendars, the Intranet, or the Internet.
- v) Protecting Hard Copy Transmissions of Files Containing Sensitive PII
- (1) Do not remove records about individuals with sensitive PII from facilities where HUD information is authorized to be stored and used unless approval is first obtained from a supervisor. Sufficient justification, as well as evidence of information security, must be presented.
  - (2) Do not use interoffice or translucent envelopes to mail sensitive PII. Use sealable opaque solid envelopes. Mark the envelope to the person's attention.

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- (3) When using the U.S. postal service to deliver information with sensitive PII, double-wrap the documents (e.g., use two envelopes – one inside the other) and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.||

vi) Records Management, Retention and Disposition

- (1) Follow records management laws, regulations, and policies applicable within your jurisdiction.
- (2) Ensure all YHA locations and all entities acting on behalf of YHA are managing records in accordance with applicable laws, regulations, and policies.
- (3) Include records management practices as part of any scheduled oversight protocols.
- (4) Do not maintain records longer than required.
- (5) Destroy records after retention requirements are met.
- (6) Dispose of sensitive PII appropriately – use cross-cut shredders or burn bags for hard copy records and permanently erase (not just delete) electronic records.

vii) Incident Response

- (1) Supervisors should ensure that all personnel are familiar with reporting procedures.

YHA will promptly report all suspected compromises of sensitive PII related to HUD programs and projects to HUD's National Help Desk at 1-888-297-8689.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

YHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that YHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

YHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

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YHA Policy

YHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

**16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, YHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If YHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), YHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, YHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, YHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

YHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, YHA is not providing such a report.

**PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

**16-VIII.A. OVERVIEW**

The HCV regulations allow YHA to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact YHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology YHA will use to determine whether or not YHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

**16-VIII.B. METHODOLOGY**

YHA Policy

YHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the YHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, YHA will add anticipated

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HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if YHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, YHA will be considered to have insufficient funding.

## **Chapter 17**

### **PROJECT-BASED VOUCHERS (PBV) AND RENTAL ASSISTANCE DEMONSTRATION UNITS (RAD)**

#### **PART I: PROJECT BASED-VOUCHERS**

##### **17.1.A.INTRODUCTION**

The Project-Based Voucher Program was enacted in 1998 as part of the Quality Housing and Work Responsibility Act (QHWRA), with substantial revisions under the FY 2001 Appropriations Act. Based on a proposed rule and public comment, HUD published the Final Rule on November 14, 2005 and amended the rule in July, 2014. Further guidelines for implementation are to be found in PIH Notices 2011-54, 2012-32 rev, 2013-11, 2014-17 and 2015-5.

The Program may be administered by Housing Authorities that already administer a Tenant-Based Voucher Program under an Annual Contributions Contract (ACC) with HUD. The significant difference between the programs is that assistance is “attached to the structure” in the Project-Based Program while assistance is considered “portable” in the Tenant-Based Program. Under HUD Regulations at 24 CFR 983, a Housing Authority may commit up to 20% of its budget authority under the ACC to Project-Based Vouchers. Under HOTMA, this has been increased to 30% under specific conditions. Participation is allowed at the discretion of the individual Housing Authority. No additional funding is provided by HUD for the administration of the Program.

The YHA will utilize this Program to further its mission of creating and preserving affordable housing in its jurisdiction. This chapter defines the procedures and the criteria for acceptance of units to the program. The administrative procedures are set for per the HUD Final Rule and PIH RAD Notices. The chapter also provides policy and regulatory differences between the Project-Based and Tenant-Based Voucher Programs that are significant for owners and participants.

The YHA will operate a project-based voucher (PBV) program with up to the maximum twenty percent (20%) of its Housing Choice Voucher Program budget authority. In addition, YHA will explore the opportunity to increase to 30% under the revised regulations, once HUD places them into final format. In the event HUD increases the level of allowed budget authority that may be used for PBV assistance, the YHA may increase the PBV program up to the maximum level allowed by HUD.

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PBV program is subject to the regulations at 24 CFR part 983, which includes regulations governing policies and procedures that are not specified in this Administrative Plan.

In addition to the policies and procedures stated below, and other PBV regulations stated at 24 CFR part 983, YHA's PBV program is subject to most of the requirements of the Housing Choice Voucher Program, as specified in this Administrative Plan and in other HUD regulations.

### **Description of the YHA PBV Program Commitment and Priorities** [24 CFR 983.5]

YHA's PBV program is designed to ensure that PBV assistance is used to support goals that could not be equally achieved through the use of tenant-based voucher assistance. YHA's PBV program is committed to the following priorities:

1. Expand the supply of affordable housing and increase the affordable housing choices of residents within the jurisdiction
2. Support projects which further revitalize neighborhoods, promote the deconcentration of poverty and generally provide increased housing and economic opportunities.
3. Work with the community to identify and serve populations with particular housing needs, including but not limited to the provision of supportive services to promote self-sufficiency and supportive housing for families with disabilities.
4. Preserve affordable housing stock in the community served by YHA

YHA will periodically issue a Request for Proposals (RFP) for the PBV Program to owners and developers of existing, newly constructed, or rehabilitated multi-family housing. The RFP and selection process will be administered in compliance with the YHA Procurement Policy. Sites will be selected according to the criteria set forth in this chapter of the YHA Administrative Plan.

YHA will enter into a one- to fifteen-year HAP contract with the owner(s) of existing housing or newly constructed or rehabilitated housing selected under the Program criteria. The YHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the YHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. YHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the YHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the

extension. In the case of YHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59

In the case of newly constructed or rehabilitated housing sites which are not completed prior to their selection by YHA, the development must be completed under an Agreement between the owner and the YHA. In the Agreement, YHA will agree to execute a HAP contract after the owner completes the construction or rehabilitation of the units according to HQS and the other standards set forth in the YHA PBV Program.

#### **17.1.B. WHEN THE TENANT-BASED VOUCHER APPLIES [24 CFR 983.2].**

24 CFR Part 982 is the basic regulation for the tenant-based voucher program. All of part 982 applies to the PBV program except for the following:

- (1) Provisions on issuance or use of a voucher;
- (2) Provisions on portability;
- (3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option. YHA may not provide PBV program assistance to these types of housing (24 CFR 983.9)
- (4) Other exceptions as specified in 983.2.

#### **17.1.C. PBV DEFINITIONS [24 CFR 983.3]**

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

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

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

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

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

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

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

***Household.*** The family and any YHA-approved live-in aide.

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

- (1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and
- (2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

***Housing credit agency.*** For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a State participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986.

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

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

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

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

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

**Project.** A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. *Contiguous* in this definition includes “adjacent to”, as well as touching along a boundary or a point.

**Project-based certificate (PBC) program.** The program in which project-based assistance is attached to units pursuant to an Agreement executed by YHA and owner before January 16, 2001 (see §983.10).

**Proposal selection date.** The date YHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in this chapter of the YHA Administrative Plan.

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

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

**Release of funds** (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and §983.58, means that HUD approves the local YHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the YHA to execute an “agreement to enter into housing assistance payment contract” (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

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

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

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

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

**Special housing type.** Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

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

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

***Utility allowance.*** See 24 CFR 5.603.

***Utility reimbursement.*** See 24 CFR 5.603.

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

#### **17.1.D. OTHER FEDERAL REQUIREMENTS [24 CFR 983.4]**

The following provisions apply to assistance under the PBV program.

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

***Debarment.*** Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

***Definitions.*** See 24 CFR part 5, subpart D.

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

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

***Fair housing.*** Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.

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

***Fraud.*** See 24 CFR part 792. YHA retention of recovered funds.

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

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

***Labor standards.*** Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), 29 CFR part 5, and other federal laws and

regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

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

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

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

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

**Protection for victims of domestic violence, dating violence, and stalking.** See 24 CFR part 5, subpart L.

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

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

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

**Waiver of HUD rules.** See 24 CFR 5.110.

#### **17.1.E. MAXIMUM AND MINIMUM AMOUNT OF PBV ASSISTANCE [24 CFR 983.6]**

The YHA may select owner proposals to provide project-based assistance for up to 20 percent of the amount of budget authority allocated to the YHA by HUD in the YHA voucher program. YHA is not required to reduce the number of PBV units selected under an Agreement or HAP contract if the amount of budget authority is subsequently reduced. All Project-based Certificate (PBC) and project-based voucher units for which the YHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for PBC or project-based voucher assistance count against the 20 percent maximum.

The YHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC. Before the YHA issues a Request for Proposals in accordance with §983.51(b)(1) or makes a selection in accordance with §983.51(b)(2), the YHA must submit the following information to a HUD field office for review:

- (1) The total amount of annual budget authority;

- (2) The percentage of annual budget authority available to be project-based; and
- (3) The total amount of annual budget authority the YHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

#### **17.1.F. UNIFORM RELOCATION ACT [24 CFR 983.7]**

All households displaced as a result of the Agreement or HAP contract must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

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

The YHA must require the owner to comply with the URA and 49 CFR part 24. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the YHA.

#### **17.1.G. PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

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

The YHA must select PBV proposals in accordance with the selection procedures in the YHA Administrative Plan. The YHA must select PBV proposals by either of the following two methods.

- (1) ***YHA request for PBV Proposals.*** The YHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- (2) ***Selection based on previous competition.*** The YHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance,

community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

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

***YHA notice of owner selection.*** The YHA 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.

***YHA-owned units.*** YHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the YHA-owned units were appropriately selected based on the selection procedures specified in the YHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit. PBV may be used in the conversion of Public Housing to the PBV Program under RAD.

***Public review of YHA selection decision documentation.*** The YHA must make documentation available for public inspection regarding the basis for the YHA selection of a PBV proposal. Owner proposal selection does not require submission of form HUD-2530 or other HUD previous participation clearance.

### **Other Criteria**

The YHA, YHA-affiliates, or developers engaged by the YHA to redevelop YHA property, may submit PBV proposals and be awarded vouchers under any RFP published by the YHA or be awarded vouchers if the proposed project was competitively selected under another federal, state, or local housing assistance program in accordance with 24 CFR 983.51(b)(2). Proposals submitted by the YHA, an YHA-affiliate, or developer engaged by the YHA to redevelop public housing, must conform to the submission guidelines stated in the full RFP document and shall be evaluated under the same selection criteria as all other proposals. No YHA, or YHA-affiliate, employee responsible for preparing the response to the RFP shall be involved in the evaluation or selection of proposals or the award of the vouchers. Provided, however, that any selection process for YHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

Proposals for PBV assistance may have been independently selected for housing assistance as described above may be submitted to YHA on a rolling basis. Additionally, the YHA may also directly contact specific owners that have already been selected for federal, state or local housing assistance based on a previously held competition to inform them of available PBV assistance.

YHA's selection of proposals under the alternative competitive processes may be contingent upon the owner providing additional information required according to YHA's selection requirements and HUD and YHA requirements for PBV assistance. YHA will inform owners of any additional requirements at the time their proposals are submitted. Housing owned by YHA, a YHA-affiliate, or a developer engaged by YHA may also be awarded vouchers under this Section. Provided, however, that any selection process for YHA-owned units shall be approved by HUD in accordance with 24 CFR Part 983.

### **Selection Criteria**

Proposals will be selected according to the following selection criteria:

- The housing must promote one of YHA's priorities for its PBV program;
- The proposal must comply with all HUD program regulations and requirements;
- The property must be eligible housing in accordance with 24 CFR 983.53 and 983.54.
- The proposal must comply with the HUD cap on PBV units per project at 24 CFR 983.56;
- The housing site must meet the site selection standards detailed at 24 CFR 983.57;
- Proposals for new construction or rehabilitation projects must demonstrate capacity, experience, and successful outcomes in prior projects that indicate their ability to complete the construction work effectively and within the proposed schedule;
- Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low income persons and families;
- Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services. More detailed information about minimum supportive services guidelines is provided later in this addendum.
- Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project's long-term viability.
- The owner is good standing with HUD and YHA.

YHA reserves the right to reduce the number of project-based units that have been requested.

## Housing Types

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

**Existing housing**—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of YHA selection the units substantially comply with HQS.

- (1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.
- (2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

**New Construction or Rehabilitated Housing** as found in 983 Subpart D

### 17.1.H. PROHIBITION OF ASSISTANCE FOR INELIGIBLE UNITS [24 CFR 983.53]

YHA will not attach or pay PBV assistance for units in the following types of housing:

- (1) Shared housing;
- (2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;
- (3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, YHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;
- (4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;
- (5) Manufactured homes;
- (6) Transitional Housing

**Prohibition against assistance for owner-occupied unit.** The YHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

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

***Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP.*** The YHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in §983.152 after proposal submission and prior to execution of an AHAP

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

- (a) A public housing dwelling unit;
- (b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);
- (c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);
- (d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- (e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z-1). However, YHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;
- (g) A Section 202 project for elderly or non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, (12 U.S.C. 1701q);
- (h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);
- (i) A Section 101 rent supplement project (12 U.S.C. 1701s);
- (j) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (e.g., a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 et seq.);
- (l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by YHA 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).

#### **17.1.I. SUBSIDY LAYERING REVIEW [24 CFR 983.55]**

***Subsidy layering requirements.*** The YHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

***When subsidy layering review is conducted.*** The YHA may not enter into an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

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

#### **17.1.J. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR 983.56]**

***25 percent per project cap.*** Except as provided in the regulations and RAD conditions, YHA will not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in a project.

***Excepted Units.*** In the following cases, PBV units are not counted against the 25 percent per project cap:

- Units in a single-family building (1-4 units);
- Excepted units in a multifamily project.

“Excepted units” means units in a multifamily building that are specifically made available for qualifying families. “Qualifying families” means:

- Elderly or disabled families; or
- Families receiving supportive services.

YHA must include in the administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. YHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the YHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the YHA administrative plan, the YHA will take the actions provided under §983.262(d), and the owner may terminate the lease in accordance with §983.257(c).

Also, at the time of initial lease execution between the family and the owner, the family and the YHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the YHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

*Set-aside for qualifying families.* In leasing units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families. YHA may refer only qualifying families for occupancy of excepted units.

#### **17.1.K. SUPPORTIVE SERVICES FOR FAMILIES IN EXCEPTED UNITS AND GUIDELINES AND REQUIREMENTS [24 CFR 983.56]**

Pursuant to HUD regulations, project-based assistance will ordinarily be limited to 25% of the units contained within the proposed project. However, for projects housing elderly families, disabled families or for projects providing supportive services, each unit that is occupied by elderly, disabled or families receiving qualified supportive services shall be an “excepted unit” and shall not apply towards the 25% cap. Furthermore, buildings with four (4) or fewer units are excluded from the 25% cap.

#### **Qualifying Supportive Services**

Qualifying and Supportive services include an array of activities to transition families to a better quality of life or movement to self-sufficiency including but not limited to:

- Participation in any of the YHA’s Housing Choice Voucher Program FSS programs
- Child care – child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;
- Transportation – transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;
- Education – remedial education; education for completion of secondary or post-secondary schooling, English as Second Language (ESL) classes;
- Employment – job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;
- Personal Welfare – substance/alcohol abuse treatment and counseling;
- General health care and services – mental health services; HIV/AIDS related services; behavior assessments

- Household skills and management – training in homemaking and parenting skills; household management; money management; nutrition; obtaining and retaining government, financial and medical benefits; family counseling;
- Legal Services
- Other services – any other services and resources, including case management, or reasonable accommodations for individuals with disabilities, that the YHA determines to be appropriate in assisting families to achieve economic independence and self-sufficiency.

It is not necessary that the above services be provided by or at the project. However, to qualify for as an “excepted unit” a family must have at least one member receiving at least one qualifying supportive service. Proposals that include supportive services should identify the particular services that will be provided and the service provider(s). YHA will evaluate proposals including supportive housing units on the basis of the specific services provided, the intensity of the services and the target population to be served. YHA will also evaluate supportive housing proposals based on the history and track record of the proposed service providers and the need for the supportive housing at the proposed site.

Supportive services for exempted units must be in addition to those provided by YHA. They may be coordinated by a supportive services coordinator employed by the owner or management-company, or provided by a qualified non-profit service agency as determined by YHA.

Supportive services provided by YHA include the Family Self-Sufficiency Program, the computer literacy classes, job readiness classes, computer-based job training and adult basic education classes offered onsite in YHA’s public housing development. All tenant-based and project-based voucher residents, regardless of disabilities or limitations, are eligible for these services.

Supportive services proposed by the owner, property manager, or a non-profit service agency must be specified in the response to the project-based RFP. If the services are approved and the proposed units are accepted as exempt by YHA, the services are described as a required component in the Agreement and HAP contract. To qualify as an excepted unit, the owner or provider agency must demonstrate a reasonable likelihood of funding for the approved supportive services for families occupying the unit throughout the term of the HAP contract.

To qualify as an YHA approved supportive service in excepted units, services must be directed to helping the family achieve the ability to live independently as possible in consideration of their disability. It must be based on case management which accurately assesses family needs, makes appropriate referrals for serving those needs, encourages family participation, and accurately tracks and records family participation and progress on a monthly basis. It is not necessary that the services be provided at or by the project, if they are approved by YHA.

Participation in the approved supportive service is mandatory for families of excepted units. To qualify for an excepted unit, a family must have at least one adult member receiving at least one

qualifying supportive service. YHA will not require participation in medical or disability-related services as a condition of living in an excepted unit, other than drug and alcohol treatment in the case of current abusers.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received supportive services as defined here, and successfully completes the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the supportive services requirement as outlined herein, YHA will take the actions provided under Sec. 983.261(d) that includes termination from the program, and the owner may terminate the lease in accordance with Sec. 983.257(c).

At the time of initial lease execution between the family and the owner, the family and YHA will sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require YHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

YHA will monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. YHA will visit sites with excepted units annually to verify continued operation of the program and compliance with the requirements of the HAP contract. This site visit will include an interview with the program or case manager, and a review of a representative portion of case files and the system for tracking family participation.

### **Family Responsibility**

At the time of the initial lease execution between the family and the owner, the family and YHA must sign a Statement of Family Responsibility. The Statement of Family Responsibility must contain all family obligations including the family's participation in a service program as contemplated within this administrative plan.

At the family's annual income recertification, YHA will require written documentation from the service provider or the owner indicating the family's continued compliance with the terms of the supportive services plans. Project owners will also be expected to provide some level of monitoring of the services provided. This monitoring should be detailed in the proposal, and will be evaluated as part of the selection process. At YHA's discretion, YHA may request additional documentation of compliance with supportive service obligations.

The unit eligible for status as an "excepted unit" so long as at the time of the occupying family's initial tenancy at least one member of the family is receiving a qualifying supportive service. If

the family completes an FSS contract of participation or the supportive services requirement, the unit will continue to count as an “excepted unit” for as long as the family resides in that unit.

### **Family Failure to Comply with Supportive Service Requirements**

Failure without good cause by a family to complete or comply with its supportive service participation requirements will result in termination of the project based assistance for that unit and may result in the termination of the lease by the project owner.

### **17.1.L. HUD AND YHA SITE SELECTION CRITERIA [24 CFR 983.57]**

YHA will only select proposals which demonstrate consideration of and compliance with the site selection standards at 24 CFR 983.57, as such may be amended or revised, which shall ensure that selected proposals will meet the above program goals of deconcentrating poverty, expanding housing and economic opportunities, and otherwise providing needed housing support.

YHA will not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless YHA has determined that:

- (1) Project-based assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with YHA Agency Plan and the YHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a YHA will consider the following:
  - (a) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
  - (b) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;
  - (c) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
  - (d) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
  - (e) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
  - (f) If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, YHA will consider whether in the past five years there has been an overall decline in the poverty rate;

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

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

(3) The site meets the HQS site standards at 24 CFR 982.401(1).

(4) The site selection will meet AFFH conditions and goals.

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

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

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

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

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

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

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

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

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

(a) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration; or

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

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

(d) Units may be considered "comparable opportunities," as used in paragraph (3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

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

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

- There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.
- There are racially integrated neighborhoods in the locality.
- Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.
- Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.
- A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.
- Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

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

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

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

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least

equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

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

#### **17.1.M. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The City, County or HUD is the “responsible entity” or “RE” responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6. If YHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself. (24 CFR 58.11).

In the case of existing housing, the RE 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.

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

- (1) The RE has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds;
- (2) The RE has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or
- (3) HUD has performed an environmental review under 24 CFR part 50 and has notified YHA in writing of environmental approval of the site.

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

YHA will supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site. YHA will require the owner to carry

out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

#### **17.1.N. YHA-OWNED UNITS [24 CFR 983.59]**

*Selection of YHA-owned units.* The selection of YHA-owned units must be done in accordance with the proposal selection procedures set forth in this chapter of the Administrative Plan (24 CFR 983.51(e)). In the case of YHA-owned units, the following program services may not be performed by the YHA, but must be performed instead by an independent entity approved by HUD.

- (1) *Determination of rent to owner for the YHA-owned units.* Rent to owner for YHA-owned units is determined pursuant to Sec. 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser;
- (2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for YHA-owned units must be agreed upon by the YHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the YHA; and
- (3) *Inspection of YHA-owned units* as required by Sec. 983.103(f).

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

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

#### **17.1.O. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

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

*HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982 apply to the PBV program.

***Lead-based paint requirements.*** The lead-based paint requirements at Sec. 982.401(j) do not apply to the PBV program. The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

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

***Minimum Standards.*** HQS establishes the minimum federal housing quality standards for PBV housing. However, YHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement.

#### **17.1.P. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]**

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

#### **17.1.Q. INSPECTING UNITS [24 CFR 983.103]**

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

YHA will inspect each contract unit before execution of the HAP contract. YHA may not enter into a HAP contract until every unit covered by the contract fully complies with the HQS.

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

***Annual/Biennial inspections.*** At least annually/biennially during the term of the HAP contract, YHA will inspect a random sample, consisting of at least 20 percent of the contract units in each **building** to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a **building** fail the initial inspection, YHA will re-inspect 100 percent of the contract units in the building.

***Other inspections.*** YHA may inspect contract units whenever it determines an inspection is needed to comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. YHA will take into account complaints from residents and any other information coming to its attention in scheduling inspections.

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

***Quality Control Inspections.*** In conducting supervisory quality control HQS inspections, YHA shall include a representative sample of both tenant-based and project-based units.

***Inspecting YHA-owned units.*** In the case of YHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance the above section on YHA-owned units (24 CFR 983.59). The independent entity must furnish a copy of each inspection report to YHA and to the HUD field office where the project is located. YHA will 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 YHA as owner.

***Mixed-finance properties.*** In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the YHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

#### **17.1.R. SUBPART D- REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS**

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

#### **The Agreement to Enter into a HAP Contract (24 CFR 983.152 - 983.154)**

For units that do not substantially comply with HQS on the proposal selection date, an agreement to enter into a Housing Assistance Payment (HAP) Contract may be made. This includes newly constructed or rehabilitated housing sites which are not completed prior to their selection by YHA. In such cases the development must be completed under an Agreement between the owner and the YHA. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162). In the Agreement the owner agrees to develop the contract units to comply with HQS, and YHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, YHA will enter into a HAP contract with the owner for the contract units.

***Commencement of construction or rehabilitation.*** The YHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing or rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

At a minimum, the Agreement must include the following for units to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

1. Site description;
2. Location of contract units on site;
3. Number of contract units by area (square feet) and number of bedrooms and bathrooms;
4. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement,
7. Estimated initial rents to owner for the contract units;
8. Anticipated term of the initial HAP contract
9. Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the site plan and rehabilitation work write up and, where determined necessary by the YHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications. At a minimum, the housing must comply with the HQS. YHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

10. Deadlines for completion by the owner, and for the owner to submit the required evidence of completion.

### **When Agreement is Executed**

The agreement must be promptly executed, in accordance with the following conditions:

- (a) ***Prohibition of excess subsidy.*** The YHA may not enter the Agreement with the owner until the subsidy layering review is completed (see §983.55).
- (b) ***Environmental approval.*** The YHA may not enter the Agreement with the owner until the environmental review is completed and the YHA has received the environmental approval (see §983.58).
- (c) ***Prohibition on construction or rehabilitation.*** The YHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission.

### **Conduct of Development Work (24 CFR 983.154)**

The development will comply with conditions under the conduct of development work in the regulations.

In the case of an Agreement for nine or more contract units to be newly constructed or substantially rehabbed, the owner must certify that it's contractors and subcontractors will pay Davis-Bacon wages to laborers and mechanics employed in the construction of the contract units. They must also certify they will comply with Section 3 of the Housing and Urban Development Act of 1968. The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The YHA must monitor compliance with labor standards

The Agreement will include the requirements in 24 CFR 983.154 including certification by the Owner that they and other project principles are not on the US General Services Administration list of parties excluded from federal procurement and non-procurement programs. In addition, the owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP Contract, or HUD regulations.

The Agreement will specify that, at a minimum, the housing must comply with the HQS and obtain a final certificate of occupancy from the City/County after passing City/County inspections for compliance with the City's/County's adopted building and property maintenance codes.

YHA may not enter the Agreement with the owner until the subsidy layering review is completed by HUD and the environmental review is completed and the YHA has received the environmental approval from the RE. The Agreement will be executed promptly by YHA after it gives notice of proposal selection to the owner, and receives the subsidy layering review approval from HUD and the environmental review approval from RE.

#### **17.1.S. COMPLETION AND ACCEPTANCE OF UNITS [24 CFR 983.155 - 983.156]**

The owner must complete the housing in accordance with the terms of the Agreement. Evidence of completion will include the following in the form and manner required by YHA:

- (1) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement;
- (2) Owner certification that the owner has complied with the labor standards and equal opportunity requirements set forth in the Agreement;
- (3) A permanent certificate of occupancy from the City/County
- (4) An architect's certification that the housing complies with:
  - a) HUD Housing Quality Standards;
  - b) All applicable building codes;
  - c) Zoning;
  - d) The rehabilitation work write-up (for rehabilitated housing) or the plans and specifications (for newly constructed housing); or any additional design or quality requirements required by YHA pursuant to the Agreement.
  - e) Any additional design or quality requirements pursuant to the Agreement

When YHA has received owner notice that the housing is completed:

- 1) YHA will inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by YHA under the Agreement.
- 2) YHA will determine if the owner has submitted all required evidence of completion.
- 3) If the work has not been completed in accordance with the Agreement, YHA will not enter into the HAP contract.

A request for YHA approval of any change in the project design or configuration which alters the terms of the Agreement (e.g. a reduction in the size or number of units) must be received by YHA 30 days in advance of the planned implementation of the change during construction. YHA shall have 10 business days to review such request. YHA may terminate the Agreement if such change, in the sole opinion of YHA, substantially alters the scope of the project, reduces the quality of the housing to be provided, or increases YHA's administrative requirements.

The owner must inform YHA 30 days in advance of any projected delay in the completion of the site, and request an extension of the Agreement. At YHA's discretion, the Agreement may be extended for a 30 day period. YHA may extend the Agreement for a total of three 30 day periods if it determines at the end of each period that there is reasonable cause for the delays. Extensions beyond 90 days are not permitted and YHA will advise the owner to re-submit the site in a future YHA PBV proposal round when it is completed.

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

#### **17.1.T. THE HAP CONTRACT [24 CFR 983.201 – 983.208]**

After YHA approves and accepts the units, it will enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162). YHA will make housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the contract term.

The HAP contract must specify:

- 1) The total number of contract units by number of bedrooms;
- 2) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- 3) Information needed to identify the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit.
- 4) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
- 5) Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
- 6) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

- 7) The HAP contract term;
- 8) The number of units in any building that will exceed the 25 percent per building cap (as described in Sec. 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and
- 9) The initial rent to owner (for the first 12 months of the HAP contract term).

Before execution of the HAP contract, YHA will inspect each contract unit in accordance with the above section in this Chapter regarding inspecting units (24 CFR 983.103(b)). YHA may not enter into the HAP contract until YHA has determined that the unit complies with the HQS.

In the case of existing housing, the HAP contract must be executed promptly after YHA selection of the owner proposal and YHA inspection and acceptance of the housing.

In the case of newly constructed or rehabilitated housing the HAP contract must be executed after YHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion. In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement.

***Term of HAP contract. (24 CFR 983.206)***

***15-year initial term.*** The YHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of YHA-owned units, the term of the initial HAP contract shall be determined in accordance with §983.59.

**YHA Policy**

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

***Extension of term.*** YHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to 15 years if the YHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. YHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively.

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

extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of YHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with §983.59.

YHA Policy

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

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

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

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, YHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such notice shall be delivered promptly after making such a determination. Such action by YHA shall be implemented in accordance with HUD instructions.

***Termination by Owner--Reduction Below Initial Rent.*** The owner may terminate the HAP contract, upon notice to the YHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with 24 CFR 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

**Statutory Notice Requirements: Contract Termination or Expiration (24 CFR §983.206)**

Notices required in accordance under termination or expiration must be provided in the form prescribed by HUD. Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the YHA and assisted tenants of the termination. For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner's refusal to renew the HAP contract. If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent. 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.

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

***Amendment to Add Contract Units.*** At the discretion of the YHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with §983.56(b)), or the 20 percent of authorized budget authority as provided in §983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

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

#### **Condition of Contract Units (24 CFR §983.208)**

***Owner maintenance and operation.*** The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the YHA and in the lease with each assisted family.

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

***Remedies for HQS violation.*** The YHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The YHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS. If the YHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the YHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

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

#### **17.1.U. OWNER RESPONSIBILITIES AND CERTIFICATIONS [24 CFR 983.209-983.210]**

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

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

- a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
- b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.
- c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the YHA, and the lease is in accordance with the HAP contract and HUD requirements.
- d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

- e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f) The amount of the housing assistance payment is the correct amount due under the HAP contract.
- g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
- h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the YHA, HUD, or any other public or private source) for rental of the contract unit.
- i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family's membership in a cooperative.
- j) Repair work on a 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.

**Removal of the Unit From HAP Contract (24 CFR §983.211)**

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

If the project is fully assisted, the YHA may reinstate the unit removed to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, the YHA may substitute a different unit for the unit removed to the HAP contract when the first eligible substitute becomes available.

A reinstatement or substitution of units under the HAP contract, must be permissible under §983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The YHA must refer eligible families to the owner in accordance with the YHA's selection policies.

**17.1.V. TENANT SELECTION [24 CRF 983.251]**

YHA may select families who are participants in the YHA's tenant-based voucher program and families who have applied for admission to the voucher program- including the PBV Program. Except for voucher participants (determined eligible at original admission to the voucher

program), the YHA may only select families determined eligible for admission at commencement of PBV assistance. The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to admission to the project-based program. YHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the YHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.

As with the tenant based program, not less than 75 percent of the families admitted to YHA's tenant based and project-based voucher programs during the fiscal year from the YHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) also apply to the total of admissions to the YHA's tenant based and project-based voucher programs.

***Protection of In-Place Families.*** The term "in-place family" means an eligible family residing in a proposed contract unit on the proposal selection date. In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the YHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (YHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the YHA's waiting list. YHA shall give such families first priority for admission to the PBV program. This protection does not apply to families occupying the site that are not eligible to participate in the program on the proposal selection date.

***Selection from the YHA Waiting List.*** Applicants who will occupy PBV units must be selected by YHA from the YHA waiting list. The YHA must select applicants from the waiting list in accordance with the policies in the YHA Administrative Plan.

#### **Waiting List Management**

The YHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the YHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

YHA will establish individual site-based waiting lists for each PBV project selected.

YHA may place families referred by the PBV owner/management entity on its PBV waiting list.

YHA will offer to place applicants who are listed on the waiting list for tenant-based assistance on the site based waiting list(s) for PBV assistance upon the opening of such site based waiting list.

YHA will open and close the site-based waiting lists pursuant to the procedures outlined in Administrative Plan.

An applicant may be placed on both the tenant-based and project-based waiting list. At the time of application, should the waiting list be open, YHA will offer to place applicants who are listed on the tenant-based waiting list on the PBV waiting list, and vice versa.

YHA will establish criteria or preferences for occupancy of particular sites on the PBV waiting list. YHA may place families referred by the PBV owner on its PBV waiting list. In selecting families to occupy PBV units with special accessibility features for persons with disabilities, YHA will first refer families who require such features to the owner (see 24 CFR 8.26 and 100.202).

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

If a PBV owner rejects a family for admission to the owner's PBV units, such rejection by the owner does not affect the family's position on the YHA waiting list for tenant-based assistance.

YHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:

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

***Preference for services offered.*** In selecting families, YHA will give preference to disabled families who need services offered at a particular project. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. The preference shall be limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing; who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents shall not be required to accept the particular services offered at the site.

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

### **Preferences/Site Specific Requirements**

YHA may establish separate site-based preferences or specific requirements for each PBV project. These preferences may include those for elderly or disabled families, or preferences related to supportive housing programs. Preferences may include those outlined in the Administrative Plan. Residents on the tenant based waiting list will be informed of any applicable preferences for each PBV project at the time of the initial opening of the site-based waiting lists. Applicants for assistance shall also be informed of all applicable preferences for each list at the time of application.

For existing housing, any in-place tenant that qualifies will receive the preference for in-place residents at 24 CFR 983.251(b).

Any preferences that would be necessary to the operation of the project, or required by a funding source must be disclosed in the proposal.

YHA will have site specific requirements for each site and will be posted at the admission office and at the site. It will include additional supportive services requirements.

### **Supportive Housing Related Preferences and Disability**

If PBV units include special accessibility features for persons with disabilities, YHA will first refer families who require such accessibility features to the owner. For other units that are designated to receive supportive services, YHA may give preference to disabled families who need services offered at a particular project. Project owners may advertise the project as offering services for a particular type of disability, however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

Only families that meet the following limits will be eligible for any supportive housing preference:

- Families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing
- Families that without appropriate supportive services will not be able to obtain or maintain themselves in housing
- Families for whom such services cannot be provided in a non-segregated setting.

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

YHA is prohibited from granting preferences to persons with specific disabilities (see 24 CFR 982.207(b)(3)),

### **Tenant Selection**

In referring families to the owner for admission to excepted units, the YHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

When notified of a vacancy in a PBV unit, YHA will refer tenants from the site specific waiting list based on bedroom size in the following order:

First, applicants that meet the site-based preferences based on time and date of application and any priority.

Second, applicants that meet the tenant-based assistance preferences as set forth in this Administrative Plan based on time and date of application and any priority.

Third, all other applicants based on the time and date of the application

### **YHA Information for Accepted Family.**

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

- (1) A description of how the program works; and
- (2) Family and owner responsibilities.

**Information packet.** The YHA must give the family a packet that includes information on the following subjects:

- (1) How the YHA determines the total tenant payment for a family;
- (2) Family obligations under the program; and
- (3) Applicable fair housing information.

**Providing information for persons with disabilities.** If the family head or spouse is a disabled person, the YHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats. The YHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

**Providing information for persons with limited English proficiency.** The YHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in

accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

### **Tenant Screening**

**YHA option.** The YHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the YHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening. The YHA will provide additional information to Managers of YHA owned or substantial controlled units in accordance with the Administrative Plan.

The YHA must conduct any such screening of applicants in accordance with policies stated in the YHA administrative plan.

**Owner responsibility.** The owner is responsible for screening and selection of the family to occupy the owner's unit. The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

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

**Providing tenant information to owner.** The YHA must give the owner:

- The family's current and prior address (as shown in the YHA records); and
- The name and address (if known to the YHA) of the landlord at the family's current and any prior address.

When a family wants to lease a dwelling unit, the YHA may offer the owner other information in the YHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The YHA will provide additional information upon written request by the owner.

YHA must give the family a description of the YHA policy on providing information to owners. The YHA policy must provide that the YHA will give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L, apply to tenant screening.

YHA's policy for providing information to owners about families referred to PBV units is not different than YHA's policies for tenant-based applicants, which are provided in YHA's Administrative Plan.

**Leasing of contract units. (24CFR §983.253)**

***Owner selection of tenants.*** During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the YHA from the YHA waiting list. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

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

**Vacancies. 24 CFR §983.254**

***Filling vacant units.*** The owner must promptly notify the YHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the YHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on the YHA waiting list referred by the YHA. The YHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

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

**Lease. (24CFR §983.256)**

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

***Form of lease.*** The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in the lease addendum and regulations. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a YHA

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

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

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

- (1) The names of the owner and the tenant;
- (2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- (3) The term of the lease (initial term and any provision for renewal);
- (4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
- (5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
- (6) The amount of any charges for food, furniture, or supportive services.

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

- The program tenancy requirements (as specified in this part);
- The composition of the household as approved by the YHA (names of family members and any YHA-approved live-in aide).

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

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

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

***Term of lease.*** (1) 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. The lease may provide either:

- For automatic renewal for successive definite terms (e.g., month-to-month or year-to-year); or
- For automatic indefinite extension of the lease term.

The term of the lease terminates if any of the following occurs:

- The owner terminates the lease for good cause;
- The tenant terminates the lease;
- The owner and the tenant agree to terminate the lease;
- The YHA terminates the HAP contract; or
- The YHA terminates assistance for the family.

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

**Owner termination of tenancy and eviction. 24 CFR §983.257**

In general, 24 CFR 982.310 applies with the exception that §982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, “good cause” does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part. Part 5, subpart L of 24 CFR, on protection for victims of domestic violence, dating violence, or stalking applies to the PBV Program.

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

**Continuation of housing assistance payments. 24 CFR§983.258**

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

**Security deposit: amounts owed by tenant. 24 CFR§983.259**

The owner may collect a security deposit from the tenant. The YHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the YHA has no liability or responsibility for payment of any amount owed by the family to the owner.

**Procedures for Families Occupying a Unit of the Wrong Size or an Accessible Unit Whose Accessibility Features Are Not Quite Required by the Family**

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

- (1) Wrong-size unit, or
- (2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the YHA must promptly notify the family and the owner of this determination, and of the YHA's offer of continued assistance in another unit pursuant to the regulations.

***YHA offer of continued assistance.*** If a family is occupying a:

- Wrong-size unit, or
- Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the YHA must offer the family the opportunity to receive continued housing assistance in another unit.

The YHA policy on such continued housing assistance is stated in the administrative plan and may be in the form of:

- Project-based voucher assistance in an appropriate-size unit (in the same project or in another project);
- Other project-based housing assistance (*e.g.*, by occupancy of a public housing unit);
- Tenant-based rental assistance under the voucher program; or

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

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

If the YHA offers the family the opportunity for another form of continued housing assistance in accordance with the regulations (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within 30 days as determined by the YHA, or both, the YHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the YHA, and remove the unit from the HAP contract.

#### **Family Right to Move (24CFR§983.261)**

The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the YHA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the YHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance. Before providing notice to terminate the lease, a family must contact the YHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the YHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance. If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

#### **When occupancy may exceed 25 percent cap on the number of PBV units in each project. (24 CFR§983.262)**

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

In referring families to the owner for admission to excepted units, the YHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the YHA administrative

plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the YHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the YHA does not exercise its discretion must vacate the unit within a reasonable period of time established by the YHA, and the YHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with §983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the YHA.

The YHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contact, the unit must be made available to and occupied by a qualifying family.

### **Inspections**

The YHA will inspect PBV units in accordance with the regulations at 24 CFR 983.103 and Housing Quality Standards (HQS) at 24 CFR 983.101 and 982.401 and this Administrative Plan:

- **Pre-Selection.** For new construction or rehabilitated units, the YHA will inspect the site prior to making the proposal selection. For existing housing, all units must substantially comply with HQS prior to proposal selection.
- **Prior to entering the HAP Contract.** All units must fully comply with HQS standards prior to executing the HAP Contract.
- **Turnover.** Each time a family moves out of a PBV unit, the YHA will inspect the unit before providing assistance to a new family.
- **Biennial/Annual Inspections.** The YHA will inspect at least 20% of the contract units in each building, turnover inspections are not counted towards meeting the 20%. If more

than 20% of the inspected units fail inspection, the YHA must re-inspect all units in the building.

- As needed. The YHA will inspect units as needed to ensure that the units comply with HQS. The YHA will take into account complaints and other information when scheduling inspections.

YHA-owned units shall be inspected by an independent third party approved by HUD.

## **Rent**

Rent to the owner shall be set in accordance with 24 CFR 983.301, such that the initial rent shall not exceed:

- 1) 110% of the applicable fair market rent for the unit minus the utility allowance;
- 2) the reasonable rent; or
- 3) the rent requested by the owner.

The tenant portion of the rent shall be determined in accordance with 24 CFR 983.353 and the policies in this Administrative Plan.

The YHA shall not make vacancy payments for units that are unoccupied beyond the month of move-out. Owners may request vacancy payments for the month of move out provided that the owner properly notifies the YHA of the vacancy and provided that the vacancy was not caused by any action of the owner.

Rent shall be re-determined in accordance with 24 CFR 983.302:

- Upon the owner's request upon the annual anniversary of the HAP Contract.
- When there is a 5% or greater decrease in the published fair market rents

## **17.1.W. RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM (PIH 2012-32 REV)**

YHA has converted previous public housing to RAD PBV.

**PBV Conversions.** Where the YHA converts assistance of a public housing project to Section 8 PBVs, the project will be administered by the agency on whose Annual Contributions Contract (ACC) the vouchers are assigned (which in many cases will be the same agency that is converting assistance). Contract rents will be established according to the terms described in PIH 2012-32 rev 1 and will be adjusted annually by an operating cost factor at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The initial contract will be for a period of at least 15 years (up to 20 years upon approval of the administering voucher agency) and will be subject to annual appropriations. At expiration of the initial contract, the agency administering the vouchers shall offer, and the YHA shall

accept, a renewal contract. Each project with a PBV contract will also carry a concurrent renewable RAD Use Agreement. Further, YHA will provide a ChoiceMobility option to residents of covered projects in accordance with PBV program rules. With the exception of provisions identified in PIH 2012-32 rev 1, regulatory and statutory requirements of the PBV program in 24 CFR Part 983 shall apply.

Under the Demonstration, HUD has the authority to waive or specify alternative public housing requirements, or to establish requirements for converted assistance under the demonstration. Additionally, the RAD statute imposes certain unique requirements. To facilitate the conversion of assistance, HUD is waiving or imposing the following alternative and other public housing program requirements for public housing projects converting assistance.

**Use of Public Housing Program Funds to Support Conversion.** YHA is permitted under the Demonstration to use available public housing funding, including Operating Reserves, Capital Funds, and Replacement Housing Factor (RHF) funds, as an additional source of capital in the development budget to support conversion, whether for rehabilitation or new construction. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs and establishment of a capital replacement reserve or operating reserve. These funds must be identified in the Financing Plan submitted to HUD for review. (YHA may not use public housing program funds on a project following conversion.) If the YHA requests, in accordance with section 9(j)(2)(A)(ii) of the United States Housing Act of 1937 and the relevant HUD Appropriation Acts, HUD will extend the obligation end date for Capital Funds used in the conversion for up to five years from the point when Capital Funds became available to the YHA for obligation. By extending the obligation end dates, the expenditure end dates will correspondingly be also extended. Such extensions will prevent PHAs from otherwise losing its unobligated Capital Funds prior to conversion.

Prior to the approval of a project's Financing Plan, YHA may expend up to \$100,000 in public housing program funds in related pre-development conversion costs per project without HUD approval. Predevelopment assistance may be used to pay for materials and services related to proposed development and may also be used for preliminary development work. Public housing program funds spent prior to the effective date of the HAP are subject to public housing procurement rules. Approval of the Financing Plan constitutes approval of the expenditure of necessary additional predevelopment costs supported by public housing funds.

In the case YHA is converting all units under ACC, there is no restriction on the amount of public housing funds that may be contributed to the converting project(s) at the point of conversion, i.e., the YHA may convey all program funds to the project undergoing conversion. In the case where the YHA will continue to maintain other units in its inventory under public housing ACC, a contribution to the converting project of Operating Funds that exceeds the average amount the project has held in Operating Reserves over the past three years will trigger a subsidy layering review under 24 CFR § 4.13. Similarly, any contribution of Capital Funds, including RHF funds, will trigger a subsidy layering review.

In addition, following execution of the HAP, YHA is authorized to use Operating and Capital Funds to make HAP payments for the remainder of the calendar year of conversion. Otherwise, YHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved Financing Plan.

**Inapplicability of Section 18 of the Act for Properties Converting All or Substantially All Units.** Conversion of assistance does not require approval through Section 18, unless the proposal would reduce the number of assisted units by more than a de minimis amount. Section 18 will similarly not apply for any units that will be replaced off-site. A de minimis reduction is defined as the greater of five percent of the number of project units under ACC immediately prior to conversion or five units. A unit is excluded from this de minimis threshold if any of the following apply:

1. The unit has already received approval from HUD under Section 18 for Demolition or Disposition;

**Ineligibility for Asset Repositioning Fee (ARF) or Replacement Housing Factor (RHF) Fee.** YHA may not apply for ARF and will be ineligible to receive Capital Fund RHF grants for converted units/projects as is otherwise described in 24 CFR § 990.190(h) and 24 CFR § 905.10(i), respectively. RAD does not affect ARF or RHF fees for projects and PHAs previously receiving those fees.

**Effect of Conversion on YHA's Faircloth Limit.** Section 9(g)(3) of the Act limits the construction of new public housing units, referred to as the "Faircloth Limit." Under the Faircloth Limit, the YHA may not use funds allocated under the Capital or Operating Funds for the purpose of constructing any new public housing units if the construction of those units would result in a net increase in the number of units the YHA owned, assisted, or operated as of October 1, 1999.

Conversions under the Demonstration will reduce YHA's Faircloth Limit. For example, YHA with a pre-RAD Faircloth Limit of 1,000 public housing units would have its Faircloth Limit reduced to 900 units if it converted a 100-unit project. (Units not converted under the de minimis provision would continue to count under the PHA's Faircloth cap.)

**Conversion is a Significant Amendment to Annual/Five Year Plan.** Conversion of assistance under the Demonstration will be considered a significant amendment to the YHA's Five-Year Plan for qualified and non-qualified PHAs, the Annual Plan for non-qualified PHAs, and the Moving to Work (MTW) Plan for MTW PHAs. As such, qualified and nonqualified PHAs, as

well as MTW PHAs, are subject to the Consolidated Plan requirements and the public notice and Resident Advisory Board consultation requirements outlined in 24 CFR Part 903. If the conversion will require changes to the YHA's Admissions and Continued Occupancy Policy (ACOP) and/or Section 8 Administrative Plan, these changes must also be submitted with the significant amendment. YHA must submit this amendment to HUD within 60 days following the delivery of the CHAP. In addition to the information already required by 24 CFR Part 903 for YHA Plan amendments, all PHAs shall be required to provide the information listed in their Significant Amendment.

HUD will review all significant amendments for compliance with civil rights laws, Executive Orders, and regulations. YHA may be asked to provide further information on how the proposed conversion will meet civil rights requirements including, but not limited to, how the proposed conversion will: meet the applicable site and neighborhood requirements; provide housing in the most integrated setting appropriate to the needs of qualified persons with disabilities in accordance with 24 CFR § 8.4(d); and affirmatively further fair housing.

In addition, any substantial change to the conversion plan is required to undergo the significant amendment process or other HUD review if the substantial changes involve a transfer of assistance, a change in the number of assisted units, or a change in eligibility or preferences for new applicants.

**Moving-To-Work (MTW) Agencies.** If an MTW agency chooses to convert assistance to PBRA under this Demonstration, the covered project(s) will no longer be included as part of the PHA's MTW program. If an MTW agency chooses to convert assistance to PBV, the covered project(s) will continue to be included in the PHA's MTW program. However, in the event that there's a conflict between the MTW Agreement and this final Notice, this final Notice will prevail for the covered project and HUD will work with the PHA to amend any of its MTW Agreements as needed.

**Outstanding Debt Incurred Under Section 4 of the Act.** For any outstanding principal balance and interest due on loans held by HUD issued to finance original development or modernization of the covered project under Section 4 of the Act, HUD will exercise its waiver authority under Section 4 of the Act to forgive the loan upon conversion.

**Resident Opportunities and Self Sufficiency Service Coordinators (ROSS-SC) and Public Housing Family Self-Sufficiency (PH FSS) programs.** So that residents currently participating in ROSS-SC or PH FSS may continue to do so upon conversion, HUD is waiving provisions in section 34 of the Act that limit ROSS-SC and PH FSS to Public Housing. Additionally, PHAs may not terminate or withhold assistance for noncompliance with the FSS contract for PH FSS

participants who convert to the HCV FSS program; as such, HUD is waiving 24 CFR 984.303(b)(5)(iii) for these participants.

**Public Housing Assessment System (PHAS).** Upon issuance of a CHAP, all public housing units covered by the CHAP shall not be issued scores for the fiscal year in which the CHAP was issued, nor any subsequent fiscal year until such time as conversion, at which point the units shall be subject to applicable Section 8 program requirements. If HUD revokes the CHAP, HUD reserves the right to reassess and rescore all PHAS indicators and issue a new PHAS score and designation for all fiscal years concerning these units covered by the CHAP. HUD is therefore waiving 24 CFR 902, Subpart A in order to effectuate this treatment.

Immediately after the issuance of the CHAP, PHAs must identify the units covered by a CHAP by submitting an application in the Inventory Removals module in PIC as either “RAD Conversion PBV” or “RAD Conversion PBRA.”

**Section 33 Required Conversion Review.** While Section 33 of the Act would require that YHA annually review its inventory to identify projects that should undergo the Required conversion process, YHA will not be required to assess projects that have been issued a CHAP or are covered by a Portfolio or Multi-phase Award because HUD considers the RAD conversion process to fulfill the requirements of Section 33 of the Act. Accordingly, HUD is waiving 24 CFR 972, Subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

### **Special Provisions Affecting Conversions to PBVs**

Under the Demonstration, HUD has the authority to waive statutory and regulatory provisions governing the PBV program, or to establish alternative requirements for the effective conversion of assistance. Additionally, the RAD statute imposes certain unique requirements.

Listed below are the “special” requirements applicable to public housing projects converting assistance to long-term PBVs under the first component of the Demonstration, with reference to the affected statute and/or regulation, where applicable. Special requirements are grouped into four categories: Project Selection, Contract Terms, Resident Rights and Participation, and Other Miscellaneous Provisions. All other regulatory and statutory requirements of the PBV program in 24 CFR Part 983 and section 8(o)(13) of the Act shall apply, including resident choice, environmental review, relocation assistance, and fair housing requirements.

### **PBV Project Selection**

- 1. Maximum Amount of PBV assistance.** Covered projects do not count against the maximum amount of assistance YHA may utilize for the PBV program, which is currently set at 20 percent of the amount of budget authority allocated to YHA under

the Housing Choice Voucher program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the Act as well as 24 CFR § 983.6.

**2. Cap on the Number of PBV Units in Each Project.** The 25 percent limitation on the number of units that may receive PBV assistance in a project is increased to 50 percent. An assisted household cannot be involuntarily displaced as a result of this provision. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family properties. For applicable program rules for complying with the supportive services exception, see 24 CFR § 983.56(b)(2)(II)(B).

For purposes of RAD, the requirement that a family must actually receive services to reside in the excepted unit has been modified. Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply in accordance with 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d).

To implement these provisions, HUD is waiving section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR §§ 983.56, 983.257(c), 983.261(a) and (d) for initial occupancy in the RAD converted project.

- 3. Owner Proposal Selection Procedures.** Selections of covered projects shall be made in accordance with program requirements outlined in PIH 2012-32 rev 1. To implement this provision, HUD is waiving 24 CFR § 983.51.
- 4. Site selection – Compliance with PBV Goals, section 8(o)(13)(C)(ii) of the Act and 24 CFR § 983.57(b)(1) and (c).** HUD waives these provisions having to do with deconcentration of poverty and expanding housing and economic opportunity, for the existing site.

### **PBV Contract Terms**

- 1. Length of Contract.** Covered projects shall have an initial HAP term of at least 15 years (up to 20 years upon request of the YHA and with approval by the agency

administering the vouchers). To implement this provision, HUD is waiving section 8(o)(13)(F) of the Act (which establishes a maximum term of 15 years) as well as 24 CFR § 983.205(a) (which governs contract term). Owners of covered projects are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the contract and may not reduce the number of assisted units without HUD approval. Any HUD approval of a YHA's request to reduce the number of assisted units under the contract shall be subject to conditions that HUD may impose.

- 2. Mandatory Contract Renewal.** By statute, upon contract expiration, the agency administering the vouchers shall offer, and the YHA shall accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently, section 8(o)(13)(G) of the Act, as well as 24 CFR § 983.205(b), governing the YHA discretion to renew the contract for terms of up to 15 years, will not apply.
- 3. Ownership or Control.** Pursuant to the RAD statute, during the initial term and all renewal terms of the HAP contract, HUD will require ownership or control of assisted units by a public or non-profit entity. However, as HUD, in its sole discretion, determines necessary pursuant to foreclosure, bankruptcy, or termination and transfer of assistance for material violations of, or default under, the HAP contract, HUD will require ownership or control of assisted units in the following priority: (1) a capable public entity; and (2) a capable non-public entity (e.g., a private entity), as determined by the Secretary. HUD may allow ownership of the project to be transferred to a for-profit entity to facilitate such entity's use of tax credits, but only if the YHA preserves its interest in the property in a manner approved by the Secretary. All current and future ownership entities are subject to the eligibility requirements of Section 1.3 of PIH 2012-32 rev1, including the civil rights threshold requirements.
- 4. RAD Use Agreement.** Pursuant to the RAD statute, covered projects shall have an initial RAD Use Agreement that:
  - a. Will be recorded superior to other liens on the property;
  - b. Will run for the same term as the initial HAP contract, automatically renew upon extension or renewal of the HAP contract for a term that runs with the renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination), unless the Secretary

provides approval for the RAD Use Agreement to be terminated when an owner requests a transfer of assistance;

- c. Requires that in the event that the HAP contract is removed due to breach, noncompliance or insufficiency of Appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income (AMI) at the time of admission and rents may not exceed 30% of 80% of median income for an appropriate size unit for the remainder of the term of the RAD Use Agreement; and
- d. Requires compliance with all applicable fair housing and civil rights requirements, including the obligation to affirmatively further fair housing and all applicable site selection and neighborhood standards requirements.

**5. Initial Contract Rent Setting.** HUD has calculated initial contract rents for every public housing project based on each project's subsidy under the public housing program. (See Attachment 1C for a full description of the methodology.) For all RAD applications received prior to December 31, 2013, including applications for Portfolio or Multi-phase Awards, this calculation is based on FY 2012 funding for each public housing project.<sup>1</sup> Accordingly, these rents will be established in HAP contracts for any conversions that occur in calendar year (CY) 2013. For applications received in CY 2013 where the conversion closes in CY 2014 or later, the HAP contract will carry these rents adjusted by the Operating Cost Adjustment Factor (OCAF).

Notwithstanding HUD's calculation, initial PBV contract rents are subject to the statutory and regulatory PBV requirements governing contract rents (see 24 CFR § 983.301). To this effect, initial contract rents cannot exceed the lower of: (a) the reasonable rent (as defined under 24 CFR § 983.303); (b) an amount determined by the YHA, not to exceed 110 percent of the applicable FMR (or applicable exception payment standard), minus any utility allowance; or (c) the rent requested by the owner.

Within these parameters, PHAs have additional discretion in establishing initial contract rents using the following flexibilities:

- a. **MTW Fungibility.** MTW agencies may use their MTW block grant funds to set their initial contract rents, subject to applicable program caps. The agency must use existing voucher funding to supplement rents (no additional voucher

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<sup>1</sup> FY 2012 funding calculation adds back in the Operating Subsidy Allocation Adjustment.

funding will be provided). MTW agencies may only exercise this flexibility to set initial contract rents when they have submitted an application for two or more projects. Any use of MTW block grant funds in setting initial contract rents shall be subject to subsidy layering review and MTW continued service requirements, as calculated using the MTW Baseline Methodology described in PIH Notice 201302.

- b. Rent Bundling.** PHAs may adjust subsidy (and contract rents) across multiple projects as long as the YHA does not exceed the aggregate subsidy for all of the projects the YHA has submitted for conversion under RAD. This use, which HUD refers to as “bundled” rents, is permissible when a YHA submits applications for two or more projects. There is no limit to the number of projects that a YHA may bundle.

For example, assume that NRHA is considering bundling two identical projects, both consisting of 100 units. In Project A, the contract rent is \$500 and the subsidy is \$200; and in Project B, the contract rent is \$600 and the subsidy is \$300. The YHA could bundle the two projects such that the rent at both projects will be \$550 and the subsidy provided to each project is \$250.

- c. Future Replacement Housing Factor (RHF) funds.** PHAs that are scheduled to receive ongoing RHF funding in future years may choose to forgo any ongoing RHF grants and repurpose the foregone subsidy to augment the RAD rent. See Attachment 1C for the calculation of how foregone RHF funding may augment the RAD rent.

- 6. Method of Adjusting Contract Rents.** Contract rents will be adjusted annually by HUD’s OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the Act and 24 CFR §§ 983.301 and 983.302, concerning rent determinations, shall not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract.

- 7. Transfer of Assistance.** Pursuant to the RAD statute, in order to facilitate the financing, development, and preservation of decent, safe, and affordable housing, with HUD and lender and/or investor approval, after consultation with residents, and

consistency with the Consolidated Plan, YHA (as owner) may transfer part or all of a rental assistance contract and a RAD Use Agreement to unassisted units owned or controlled by a public or non-profit entity. HUD may only approve a transfer if the project is economically non-viable, physically obsolete, severely distressed, or uninhabitable due to unforeseen circumstances such as natural disasters, or the transfer is in the best interest of the project's residents. YHA may only request a transfer of assistance at conversion or after 10 years from the effective date of the initial contract (unless a transfer is needed sooner as a result of a natural disaster). A project to which assistance is transferred is subject to all of the contract terms as described in the HAP, RAD Conversion Commitment (RCC) (see section 1.12), and Use Agreement, as well as all applicable site and neighborhood standards (including, but not limited to, site selection requirements of the Fair Housing Act and Title VI of the Civil Rights Act of 1964, including implementing regulations at 24 CFR §§ 1.4(b)(3) and 983.57). Any transfer of assistance at the time of initial conversion must be included in the significant amendment to the YHA's Annual Plan.

- 8. RAD Rehab Assistance.** Units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the approved Financing Plan and RCC, the maximum RAD Rehab Assistance YHA may receive (i.e. for occupied units, units eligible for vacancy payments, or units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion. As a result, not all units

### **PBV Resident Rights and Participation**

- 1. No Re-screening of Tenants upon Conversion.** Pursuant to the RAD statute, at conversion, current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR § 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family.
- 2. Right to Return.** Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at

the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved (see Section 1.6.B.7 and Section 1.7.A.8 of PIH 2-12-32 rev1 on conditions warranting a transfer of assistance), residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept YHA or Owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

- 3. Renewal of Lease.** Under current regulations at 24 CFR § 983.257(b)(3), upon lease expiration, YHA can choose not to renew the lease, without good cause. In such a case, the regulatory consequence is the loss of the assisted unit. Under RAD, the YHA must renew all leases upon lease expiration, unless cause exists. Consequently, 24 CFR § 983.257(b)(3) will not apply. This provision must be incorporated by the PBV owner into the tenant lease or tenancy addendum, as appropriate.
- 4. Phase-in of Tenant Rent Increases.** If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR § 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. YHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances. For example, YHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

#### YHA Policy

YHA will use the three (3) year phase in during the conversion

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and all subsequent recertifications – Full standard

*Please Note:* In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

**5. Public Housing Family Self Sufficiency (PH FSS) and Resident Opportunities and Self Sufficiency Service Coordinator (ROSS-SC) programs.** Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the FY 2013 PH FSS NOFA, to serve those FSS participants who live in units converted by RAD and who will as a result be moving to the HCV FSS program, subject to the following:

- a. If YHA has an HCV FSS program, YHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.
- b. If YHA does not have an HCV FSS program, the YHA must establish an HCV FSS program and convert the PH FSS program participants at the covered project into their HCV FSS program. PHAs are not required to offer enrollment in FSS to residents in converting projects and other HCV participants, other than to residents in converting projects that were enrolled in the PH FSS program. Please see future FSS Notices of Funding Availability and other guidance for additional details, including FSS coordinator funding eligibility of PHAs under a RAD conversion.

All PHAs will be required to administer the FSS program in accordance with FSS regulations at 24 CFR Part 984 and in accordance with the participants' contracts of participation. However, residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due

to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

Current ROSS-SC grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants, nor will its residents be eligible to be served by future public housing ROSS-SC grants.

- 6. Resident Participation and Funding.** In accordance with PIH 2012-32 rev1 Attachment 1B, residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.
- 7. Resident Procedural Rights.** The following items must be incorporated into both the Section 8 Administrative Plan and the owner's lease, which includes the required tenancy addendum, as appropriate. Evidence of such incorporation may be requested by HUD for purposes of monitoring the program.
  - a. Termination Notification.** HUD is incorporating additional termination notification requirements to comply with section 6 of the Act for public housing projects that convert assistance under RAD. In addition to the regulations at 24 CFR § 983.257, related to owner termination of tenancy and eviction, as modified by the waiver in Section 1.6(C)(3) above, the termination procedure for RAD conversions to PBV will require that YHA provide adequate written notice of termination of the lease which shall not be less than:
    - i.** A reasonable period of time, but not to exceed 30 days:
      - If the health or safety of other tenants, YHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
      - In the event of any drug-related or violent criminal activity or any felony conviction;
    - ii.** 14 days in the case of nonpayment of rent; and
    - iii.** 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

- b. Grievance Process.** HUD is incorporating additional procedural rights to comply with the requirements of section 6 of the Act.

For issues related to tenancy and termination of assistance, PBV program rules require the YHA to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD will waive 24 CFR § 982.555(b) in part, which outlines when informal hearings are not required, and require that:

- i.** In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi),<sup>2</sup> an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to YHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
  - For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.
  - For any additional hearings required under RAD, the YHA (as owner) will perform the hearing.
- ii.** An informal hearing will not be required for class grievances or to disputes between residents not involving the YHA (as owner) or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the YHA (as owner) or contract administrator.
- iii.** The YHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
- iv.** The YHA (as owner) provide opportunity for an informal hearing before an eviction.

Current PBV program rules require that hearing procedures must be outlined in the YHA's Section 8 Administrative Plan.

- 8. Earned Income Disregard (EID).** Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the

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<sup>2</sup> § 982.555(a)(1)(iv) is not relevant to RAD as the tenant-based certificate has been repealed.

EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in, as described in PIH 2013-32 rev1 Section 1.6.C.4; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR § 5.617(b)). In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant (e.g., tenants who at one time received the EID but **are** not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment); tenants that move into the property following conversion, etc.) is covered by this waiver.

- 9. Capital Fund Education and Training Community Facilities (CFCF) Program.** CFCF provides capital funding to PHAs for the construction, rehabilitation, or purchase of facilities to provide early childhood education, adult education, and job training programs for public housing residents based on an identified need. Where a community facility has been developed under CFCF in connection to or serving the residents of an existing public housing project converting its assistance under RAD, residents will continue to qualify as “YHA residents” for the purposes of CFCF program compliance. To the greatest extent possible the community facility should continue to be available to public housing residents

### **PBV: Other Miscellaneous Provisions**

- 1. Access to Records, Including Requests for Information Related to Evaluation of Demonstration.** PHAs must agree to any reasonable HUD request for data to support program evaluation, including but not limited to project financial statements, operating data, Choice-Mobility utilization, and rehabilitation work. Please see Appendix IV for reporting units in Form HUD-50058.
- 2. Additional Monitoring Requirement.** The YHA’s Board must approve the operating budget for the covered project annually in accordance with HUD requirements.
- 3. Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968 (Section 3).** Under existing PBV program rules, projects that qualify as

“existing housing” under 24 CFR § 983.52(a) are not subject to Davis-Bacon (prevailing wages, the Contract Work Hours and Safety Standards Act, and other related regulations, rules, and requirements) or Section 3 (24 CFR Part 135). However, the Davis-Bacon Act and Section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation, regardless of whether the project qualifies as “existing housing.” Developmental requirements under 24 CFR § 983.154 and fair housing provisions under 24 CFR § 983.152(c)(vi) continue to apply.

- 4. Establishment of Waiting List.** In establishing the waiting list for the converted project, the YHA shall utilize the project-specific waiting list that existed at the time of conversion, unless the assistance is being transferred to another neighborhood. If a project-specific waiting list does exist, but the YHA is transferring the assistance to another neighborhood, the YHA must notify applicants on the wait-list of the transfer of assistance, and on how they can apply for residency at the new project site or other sites. Applicants on a project-specific waiting list for a project where the assistance is being transferred shall have priority on the newly formed waiting list for the new project site in accordance with the date and time of their application to the original project's waiting list. In addition, the waiting list must be established and maintained in accordance with PBV program requirements.

If a project-specific waiting list for the project does not exist, the YHA shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the YHA’s public housing community-wide waiting list have been offered placement on the converted project’s initial waiting list. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, YHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the YHA’s policies for waiting list management, including the obligation to affirmatively further fair housing.

A YHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (e.g., radio stations, posters, newspapers) within the marketing area, informing local non-profit entities and advocacy groups (e.g., disability rights groups); and conducting other outreach as appropriate. Applicants on the agency’s centralized public housing waiting list who wish to be placed onto the newly-established waiting list are done so in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted accordance with the requirements for

effective communication with persons with disabilities at 24 CFR § 8.6 and the obligation to provide meaningful access for persons with limited English proficiency (LEP).

To implement this provision, HUD is waiving 24 CFR § 983.251(c)(2). However, after the initial waiting list has been established, the YHA shall administer its waiting list for the converted project in accordance with 24 CFR § 983.251(c).

- 5. Mandatory Insurance Coverage.** The project shall maintain at all times commercially available property and liability insurance to protect the project from financial loss and, to the extent insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval of HUD to the contrary.
- 6. Agreement Waiver.** For public housing conversions to PBV, there will be no Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D are waived.
- 7. Future Refinancing.** Owners must receive HUD approval for any refinancing or restructuring of permanent debt within the HAP contract term to ensure the financing is consistent with long-term preservation. (Current lenders and investors are also likely to require review and approval of refinancing of the primary permanent debt.)
- 8. Administrative Fees for Public Housing Conversions.** For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the YHA and HUD will cover the project units, but be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring YHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United

States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

After this transition period, the ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

### **17.1.X. YHA INFORMATION TO ACCEPTED FAMILIES [24 CFR 983.252]**

Before a family accepts an offer of PBV assistance, YHA will give the family the similar information provided in the YHA tenant-based program. This will include an oral briefing with a description of how the program works and Family and owner responsibilities, and a packet with information on how YHA determines the total tenant payment for a family, family obligations under the program; and applicable fair housing information.

***Providing Information for Persons with Disabilities.*** If the family head or spouse is a disabled person, YHA will take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including alternative formats.

***Providing Information for Persons with Limited English Proficiency.*** YHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

### **17.1.Y. OWNER SELECTION OF TENANTS [24 CFR 983.253, 983.255]**

During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by YHA from the YHA waiting list.

The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection. The contract unit leased to each family must be appropriate for the size of the family under the YHA's subsidy standards.

**17.1.Z. VACANCIES [24 CFR 983.254]**

As in the tenant-based program, YHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy. The owner must promptly notify the YHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, YHA will make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies. The owner must lease vacant contract units only to eligible families on YHA waiting list referred by the YHA.

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

**17.1.AA. DETERMINING AND RE-DETERMINING THE RENT TO OWNER [24 CFR 983.301 - .302]**

*Initial and redetermined rents.* The amount of the initial and redetermined rent to owner is determined in accordance with section §983.301 and §983.302.

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

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

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

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

*Rent to owner for certain tax credit units.* This section applies if:

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

- The contract unit is not located in a qualified census tract;
- In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

In the case of a contract unit described in this section, the rent to owner must not exceed the lowest of:

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

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

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.

***Rent to owner for other tax credit units.*** Except in the case of a tax-credit unit described in paragraph 983.301(c)(1) of the regulation, the rent to owner for all other tax credit units may be determined by the YHA pursuant to the regulations.

***Reasonable rent.*** The YHA shall determine the reasonable rent in accordance with §983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the YHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the YHA 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.

***Use of FMRs and utility allowance schedule in determining the amount of rent to owner—***  
***(1) Amounts used. (i) Determination of initial rent (at beginning of HAP contract term).*** When determining the initial rent to owner, the YHA shall use the most recently published FMR in

effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the YHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

***Redetermination of rent to owner.*** When redetermining the rent to owner, the YHA shall use the most recently published FMR and the YHA utility allowance schedule in effect at the time of redetermination. At its discretion, the YHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

***Exception payment standard and YHA utility allowance schedule.*** Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program. The YHA may not establish or apply different utility allowance amounts for the PBV program. The same YHA utility allowance schedule applies to both the tenant-based and PBV programs.

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

**Redetermination of rent to owner. (24CFR §983.302)**

The YHA must redetermine the rent to owner:

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

***Rent increase.*** The YHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to §983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the YHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the YHA. The request must be submitted in the form and manner required by the YHA.

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

***Rent decrease.*** If there is a decrease in the rent to owner, as established in accordance with §983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

If the YHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

- 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 §983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

***Notice of rent redetermination.*** Rent to owner is redetermined by written notice by the YHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§983.301 and 983.302). The YHA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

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

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

See §983.207(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

#### **17.1.BB. REASONABLE RENT [24 CFR 983.303].**

***Comparability requirement.*** At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the YHA, except that where the YHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with §983.302(e)(2).

***Redetermination.*** The YHA must redetermine the reasonable rent:

- (1) Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

- (2) Whenever the YHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- (3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and
- (4) Whenever there is any other change that may substantially affect the reasonable rent.

***How to determine reasonable rent.*** The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

In determining the reasonable rent, the YHA must consider factors that affect market rent, such as:

- The location, quality, size, unit type, and age of the contract unit; and
- Amenities, housing services, maintenance, and utilities to be provided by the owner.

***Comparability analysis.*** For each unit, the YHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project. The YHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units. The comparability analysis may be performed by YHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any YHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

***Owner certification of comparability.*** By accepting each monthly housing assistance payment from the YHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the YHA information requested by the YHA on rents charged by the owner for other units in the premises or elsewhere.

***Determining reasonable rent for YHA-owned units.*** For YHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with §983.59, rather than by the YHA. The reasonable rent must be determined in accordance with this section. The independent entity must furnish a copy of the independent entity determination of reasonable rent for YHA-owned units to the YHA and to the HUD field office where the project is located.

#### **17.1.CC. OTHER SUBSIDY: EFFECT ON RENT TO OWNER [24 CFR 983.304]**

***General.*** In addition to the rent limits established in accordance with §983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

**HOME.** For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

**Subsidized projects.** This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

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

The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

**Combining subsidy.** Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See §983.55.

**Other subsidy: rent reduction.** To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a YHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized financing.

**Prohibition of other subsidy.** For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see §983.54.

### **Rent to owner: effect of rent control and other rent limits. (24CFR §983.305)**

In addition to the limitation to 110 percent of the FMR in §983.301(b)(1), the rent reasonableness limit under §§983.301(b)(2) and 983.303, the rental determination provisions of §983.301(f), the special limitations for tax credit units under §983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

### **17.1.DD. YHA PAYMENT TO OWNER OF OCCUPIED UNIT [24 CFR 983.351]**

**When payments are made.** During the term of the HAP contract, the YHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually

occupied by an eligible family. Except for discretionary vacancy payments in accordance with §983.352, the YHA 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).

**Monthly payment.** Each month, the YHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

**Calculating amount of payment.** The monthly housing assistance payment by the YHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

**Prompt payment.** The housing assistance payment by the YHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the YHA agree on a later date.

**Owner compliance with contract.** To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

#### **17.1.EE. VACANCY PAYMENT [24 CFR 983.352.]**

**Payment for move-out month.** If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (“move-out month”). However, the owner may not keep the payment if YHA determines that the vacancy is the owner's fault.

**Vacancy payment at YHA discretion.** At the discretion of YHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with the regulations for an YHA-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 vacancy payment to the owner for each month of the maximum two-month period will be determined by YHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

YHA may make vacancy payments to the owner only if:

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

#### **17.1.FF. TENANT RENT: PAYMENT TO OWNER [24 CFR 983.353]**

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

***Tenant payment to owner.*** The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent as determined by YHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by YHA. The owner must immediately return any excess payment to the tenant. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for non-payment of YHA housing assistance payment.

***Limit of YHA responsibility.*** YHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. YHA is not responsible for paying the tenant rent, or for paying any other claim by the owner. YHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. YHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

***Utility reimbursement.*** If the amount of the utility allowance exceeds the total tenant payment, YHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities (“utility reimbursement”) and the tenant rent to the owner shall be zero. YHA either may pay the utility

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

**17.1.GG. OTHER FEES AND CHARGES [24 CFR 983.354]**

*Meals and supportive services.* Except as provided in the regulations, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

*Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the local market or provided at no additional cost to unsubsidized tenants in the premises.