

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**EXISTING HOUSING**

**PART 2 OF HAP CONTRACT**

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to U.S. Department of Housing and Urban Development, Office of the Chief Data Officer, R, Attention: Departmental Clearance Officer, 2415 Eisenhower Avenue Alexandria, Virginia 22314 Room 10000. Do not send completed forms to this address. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. This form is used in the administration of the project-based voucher (PBV) program, as authorized under section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f). This form establishes terms between a PHA and owner to provide housing assistance payments for eligible families. This information is required to obtain benefits. 24 CFR § 983.202. This information collected will not be held confidential.

**2. DEFINITIONS**

**Contract units.** The housing units covered by this HAP contract. The contract units are described in Exhibit A.

**Controlling interest.** In the context of PHA-owned units (see definition below), controlling interest means:

- (a) Holding more than 50 percent of the stock of any corporation;
  - (b) Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
  - (c) Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA;
  - (d) Holding more than 50 percent of all managing member interests in a limited liability company (LLC);
  - (e) Holding more than 50 percent of all general partner interests in a partnership;
- or

(f) Equivalent levels of control in other ownership structures.

**Existing housing.** A project that meets the following criteria:

(a) All the proposed contract units in the project either fully comply or substantially comply with HQS on the proposal or project selection date, as determined per 24 CFR 983.103(a). (The units must fully comply with HQS at the time required by 24 CFR 983.103(c).) The units substantially comply with HQS if:

1. The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and
2. The PHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.

(b) The PHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the project selection date (for projects excepted from competitive selection) through the first two years of the HAP contract.

**Family.** A person or group of persons, as determined by the PHA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. See family composition at 24 CFR 982.201(c).

**HAP contract.** This housing assistance payments contract between the PHA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in section 1.c of the HAP contract).

**Household.** The family, foster children and adults, and any PHA-approved live-in aide.

**Housing assistance payment.** The monthly assistance payment for a PBV unit by the PHA, which includes: (1) a payment to the owner for rent to the 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 total tenant payment, in the amount of such excess.

**Housing quality standards (HQS).** The minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the PBV program, including any variations approved by HUD for the PHA under 24 CFR 5.705(a)(3).

**HUD.** U.S. Department of Housing and Urban Development.

**HUD requirements.** HUD requirements which apply to the project-based voucher program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

**Independent entity.** (i) The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or

(ii) A HUD-approved entity that is autonomous and recognized under State law as a separate legal entity from the PHA. The entity must not be connected financially (except regarding compensation for services performed for PHA-owned units) or in any other manner that could result in the PHA improperly influencing the entity.

**In-place family.** A family residing in a proposed contract unit on the proposal or project selection date.

**Owner.** Any person or entity who has the legal right to lease or sublease a unit to a participant.

**PHA.** Public Housing Agency. The agency that has entered into the HAP contract with the owner. The agency is a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

**PHA-owned unit.** A dwelling unit in a project that is:

(a) Owned by the PHA (including having a “controlling interest” in the entity that owns the project; see definition above);

(b) Owned by an entity wholly controlled by the PHA; or

(c) Owned by a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner.

**Premises.** The project in which the contract unit is located, including common areas and grounds.

**Principal or interested party.** This term includes a management agent and other persons or entities participating in project management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract or in any proceeds or benefits arising from the HAP

contract.

**Program.** The project-based voucher program (see authorization for project-based assistance at 42 U.S.C. 1437f(o)(13)).

**Proposal or project selection date.** The proposal selection date is the date on which the PHA provides written notice to the party that submitted the competitively selected proposal under either 24 CFR 983.51(b)(1) or (2). For properties selected without competition in accordance with 24 CFR 983.51(c), the project selection date is the date of the PHA's board resolution approving the project-basing of assistance at the specific project.

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

**Substantial improvement.** One of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract, except that development activity performed for rehabilitated housing or newly constructed housing shall not also qualify as substantial improvement:

- (i) Remodeling that alters the nature or type of housing units in a project;
- (ii) Reconstruction; or
- (iii) A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent.** The amount payable monthly by the family as rent to the unit owner, as described in 24 CFR 983.353(b). (See also 24 CFR 5.520(c)(1).)

### 3. **PURPOSE**

- a. This is a HAP contract between the PHA and the owner.

- b. The purpose of the HAP contract is to provide housing assistance payments for eligible families who lease contract units that comply with the HUD HQS from the owner.
- c. The PHA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term. HUD provides funds to the PHA to make housing assistance payments to owners for eligible families.

**4. RENT TO OWNER; HOUSING ASSISTANCE PAYMENTS**

**a. Amount of initial rent to owner**

The initial rent to owner for each contract unit is stated in Exhibit A, which is attached to and made a part of the HAP contract. At the beginning of the HAP contract term, and until rent to owner is adjusted in accordance with section 5 of the HAP contract, the rent to owner for each bedroom size (number of bedrooms) shall be the initial rent to owner amount listed in Exhibit A.

Place a check mark here \_\_\_ if at the beginning of the HAP contract term, the PHA has elected not to reduce rents below the initial rent to owner.

If the PHA elects not to reduce rents below the initial rent to owner after execution of the HAP contract in accordance with the HUD requirements at 24 CFR 983.302(c)(2), it must execute an addendum to this HAP contract.

**b. HUD rent requirements**

Notwithstanding any other provision of the HAP contract, the rent to owner may in no event exceed the amount authorized in accordance with HUD requirements. The PHA has the right to reduce the rent to owner, at any time, to correct any errors in establishing or adjusting the rent to owner in accordance with HUD requirements. The PHA may recover any overpayment from the owner.

**c. PHA payment to owner**

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

2. The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the rent to owner exceeds the tenant rent.
3. Payment of the tenant rent is the responsibility of the family. The PHA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.
4. The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.
5. The PHA must pay the housing assistance payments promptly when due to the owner in accordance with the HAP contract. If housing assistance payments are not paid when due after the first two calendar months of the HAP contract term, the PHA shall pay the owner penalties if all of the following circumstances apply:
  - a. Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;
  - b. It is the owner's practice to charge such penalties for assisted and unassisted tenants; and
  - c. The owner also charges such penalties against the tenant for late payment of family rent to owner.

However, the PHA shall not be obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. Moreover, the PHA shall not be obligated to pay any late payment penalty if housing assistance payments by the PHA are delayed or denied as a remedy for owner's breach of the HAP contract (including any of the following PHA remedies: recovery of overpayments; suspension, abatement, reduction, termination, or withholding of housing assistance payments; and termination of the HAP contract).

6. THE PHA HAS DISCRETION WHETHER TO INCLUDE A PAYMENT RECEIVED PROVISION (PARAGRAPH 4.c.6.)

WHICH DEFINES WHEN THE HOUSING ASSISTANCE PAYMENT BY THE PHA IS DEEMED RECEIVED BY THE OWNER (E.G., UPON MAILING BY THE PHA OR ACTUAL RECEIPT BY THE OWNER), OR TO STRIKE THIS PROVISION FROM THE HAP CONTRACT FORM.

The PHA deems the HAP payment received by the owner upon \_\_\_\_\_.

7. 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.
8. If the PHA determines that the owner is not entitled to the payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
9. The owner will notify the PHA promptly of any change of circumstances that would affect the amount of the monthly housing assistance payment and will return any payment that does not conform to the changed circumstances.

**d. Termination of assistance for family**

The PHA may terminate housing assistance for a family under the HAP contract in accordance with HUD requirements. The PHA must notify the owner in writing of its decision to terminate housing assistance for the family in such case.

**5. ADJUSTMENT OF RENT TO OWNER**

**a. PHA determination of adjusted rent**

1. The PHA must redetermine the rent to owner upon the owner's request consistent with requirements established in the PHA's Administrative Plan, or at the time of the automatic adjustment by an operating cost adjustment factor (OCAF) in accordance with 24 CFR 983.302(b)(3).

**a. THE PHA AND OWNER HAVE DISCRETION**

WHETHER TO INCLUDE A RENT ADJUSTMENT BY OCAF PROVISION (PARAGRAPH 5.a.1.a), WHICH INDICATES AGREEMENT FOR RENT ADJUSTMENTS USING AN OCAF ESTABLISHED BY THE SECRETARY PURSUANT TO SECTION 524(C) OF THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997 AT EACH ANNUAL ANNIVERSARY OF THE HAP CONTRACT, OR TO STRIKE THIS PROVISION FROM THE HAP CONTRACT FORM. IF THE PHA AND OWNER AGREE TO INCLUDE A RENT ADJUSTMENT BY OCAF PROVISION:

1. THE PHA AND OWNER HAVE DISCRETION WHETHER TO INCLUDE AN ADDITIONAL INCREASE PROVISION (PARAGRAPH 5.1.a.1.a.1) WHICH REQUIRES AN ADDITIONAL INCREASE UP TO AN AMOUNT DETERMINED BY THE PHA PURSUANT TO 24 CFR 983.301(b) OR (c), AS APPLICABLE, IF REQUESTED BY THE OWNER IN WRITING, PERIODICALLY DURING THE TERM OF THE CONTRACT, OR STRIKE THIS PROVISION FROM THE HAP CONTRACT FORM.
2. IF THE PHA AND OWNER AGREE TO INCLUDE A RENT ADJUSTMENT BY OCAF PROVISION (PARAGRAPH 5.a.1.a), THERE MUST BE AN ADDITIONAL INCREASE UP TO AN AMOUNT DETERMINED BY THE PHA PURSUANT TO 24 CFR 983.301(b) OR (c), AS APPLICABLE, AT THE POINT OF CONTRACT EXTENSION, IF REQUESTED BY THE OWNER IN WRITING.
2. In addition, the PHA shall adjust the rent to owner when there is a ten percent decrease in the published, applicable Fair Market Rent in accordance with 24 CFR 983.302. However, if the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner except in those cases described in 24 CFR 983.302(c)(2).
3. The adjustment of rent to owner shall always be determined in

---

**Project-Based Voucher Program  
HAP Contract for Existing Housing**

accordance with all HUD requirements. The amount of the rent to owner may be adjusted up or down, in the amount defined by the PHA in accordance with HUD requirements.

**b. Reasonable rent**

The rent to owner for each contract unit, as adjusted by the PHA in accordance with 24 CFR 983.303, may at no time exceed the reasonable rent charged for comparable units in the private unassisted market, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner. The reasonable rent shall be determined by the PHA in accordance with HUD requirements.

**c. No special adjustments**

The PHA will not make any special adjustments of the rent to owner.

**d. Owner compliance with HAP contract**

The PHA may not approve and the owner may not receive any increase of rent to owner until and unless all the owner has complied with all requirements of the HAP contract, including compliance with the HQS (except that HQS compliance is not required for purposes of this provision for units undergoing development activity that complies with 24 CFR 983.157 or substantial improvement that complies with 24 CFR 983.212). The owner may not receive any retroactive increase of rent for any period of noncompliance.

**e. Notice of rent adjustment**

Rent to owner shall be adjusted by written notice by the PHA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

**6. OWNER RESPONSIBILITY**

The owner is responsible for:

- a.** Performing all management and rental functions for the contract units.
- b.** Maintaining the units in accordance with HQS.
- c.** Complying with equal opportunity requirements.
- d.** Enforcing tenant obligations under the lease.

- e. Paying for utilities and housing services (unless paid by the family under the lease).
- f. Collecting from the tenant:
  - 1. Any security deposit;
  - 2. The tenant rent; and
  - 3. Any charge for unit damage by the family.

7. **OWNER CERTIFICATION**

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

- a. The owner is maintaining the premises and all contract units in accordance with HUD's HQS requirements.
- b. The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- c. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA or selected from the owner-maintained waiting list in accordance with 24 CFR 983.251, 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, except as provided in 24 CFR 983.157(g)(6)(ii) and 983.212(a)(3)(ii).
- 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 unless needed as a reasonable accommodation under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA), for a household member who is a person with disabilities.
- 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 payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
  - i. The family does not own or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.
- 8. CONDITION OF UNITS**
- a. Owner maintenance and operation**

The owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance and utilities set forth in Exhibits B and C, and in the lease with each assisted family.

Place a check mark here \_\_\_ if the owner is subject to continuing compliance during the HAP contract term with additional housing quality requirements specified by the PHA in accordance with 24 CFR 983.208(a) (3).
  - b. PHA inspections**
    - 1. The PHA must inspect all contract units before the proposal or project selection date and must determine if the project meets the definition of existing housing. The PHA may not execute the HAP contract until all units meet the initial inspection requirements in accordance with 24 CFR 983.103(c).
    - 2. Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA must not provide assistance on behalf of a family for a unit that fails to comply fully with HQS.
    - 3. At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections pursuant to paragraph 2 of this section are not counted toward meeting this inspection requirement. Instead of biennially, a small rural PHA, as defined in 24 CFR 902.101, must inspect the random sample of units in accordance with this paragraph at least once every three years, in accordance with its

policy established in the PHA Administrative Plan.

4. If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.
5. A PHA may also use alternative inspections to meet the requirements for periodic inspections set forth in 24 CFR 983.103(e), subject to the procedures and requirements specified in 24 CFR 982.406(b), (c), (d), and (g).
6. When a participant family or government official notifies the PHA of a potential deficiency, the following conditions apply:
  - a. If the reported deficiency is life-threatening, the PHA must, within 24 hours, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of PHA notification.
  - b. If the reported deficiency is non-life-threatening, the PHA must, within 15 days, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of the notification from the PHA or within any PHA-approved extension.
  - c. In the event of extraordinary circumstances, such as if a unit is within a presidentially declared disaster area, HUD may approve an exception of the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.
7. The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, except where the PHA is using a verification method as described in 24 CFR 983.103(h), 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).)
8. In scheduling inspections, the PHA must consider complaints and any other information brought to the attention of the PHA.

**c. Violation and enforcement of HQS**

---

1. If the owner fails to maintain a contract unit in accordance with HQS, the PHA must take enforcement action in accordance with 24 CFR 983.208. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.
2. In the case of an HQS deficiency that the PHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the PHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the PHA may terminate assistance to a family because of an HQS breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.
3. In the case of an HQS deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the PHA may permit the owner to undertake substantial improvement in accordance with 24 CFR 983.212. However, as long as the contract unit with deficiencies is occupied, the PHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in 24 CFR 983.208.
4. A PHA may withhold housing assistance payments for an individual unit that has HQS deficiencies once the PHA has notified the owner in writing of the deficiencies. The PHA must abate housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the deficiency within the period specified by the PHA and the PHA verifies the correction. If a deficiency is life-threatening, the owner must correct the deficiency within no more than 24 hours. For other deficiencies, the owner must correct the deficiency within no more than 30 calendar days (or any reasonable PHA-approved extension). The PHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the HQS, even if some of the contract units continue to meet HQS. If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety.

5. An owner may not terminate the tenancy of any family due to the withholding or abatement of assistance. During the period that assistance is abated, the family may terminate the tenancy by notifying the owner and the PHA.

**d. 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.

**e. Substantial improvement**

1. The owner may undertake substantial improvement on a unit currently under this HAP contract if approved to do so by the PHA. The owner may request PHA approval no earlier than the effective date of the HAP contract. The PHA may approve the substantial improvement only in accordance with HUD requirements and under the following circumstances:
  - a. The unit has been damaged by fire or natural disaster, or other extraordinary circumstances exist which require a unit previously compliant with HQS to urgently undergo substantial improvement. The PHA may provide approval for substantial improvement resulting from the damage or extraordinary circumstances described in this paragraph e.1.a. after the owner submits the request; or
  - b. The owner requests to engage in substantial improvement that will commence following the first two years of the effective date of the HAP contract. The PHA may provide approval for substantial improvement occurring as described in this paragraph e.1.b after the owner submits the request, but no earlier than twenty-one months after the effective date of the HAP contract.
2. The PHA must abate housing assistance payments for a unit beginning at the time the unit has any deficiency under HUD's HQS during the period of substantial improvement. The timing for the PHA to begin withholding and abatement specified in 24 CFR 983.208(d) does not apply to deficiencies occurring during the period of substantial improvement. When all deficiencies in the unit are corrected, the PHA must recommence payments to the owner if the unit is still occupied by an assisted family, subject to

24 CFR 983.212(a)(5) and (b)(6). Additionally, the PHA must not pay vacancy payments during the period of substantial improvement.

3. The terms of the PHA approval must be recorded in an addendum to the HAP contract. The PHA may choose to temporarily remove vacant units from the PBV HAP contract during the time the units will not meet HQS during the substantial improvement. If the PHA temporarily removes a unit, the PHA reinstates the unit in accordance with 24 CFR 983.207(b). Owner failure to complete the substantial improvement as approved shall be a breach of the HAP contract and the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination pursuant to 24 CFR 983.206(c)(2).
4. Substantial improvement must be undertaken in accordance with the applicable requirements set forth at 24 CFR 983.212(b).
5. For PHA-owned units, the independent entity must determine whether to approve the PHA proposal to undertake substantial improvement in accordance with 24 CFR 983.212(c).

## **9. LEASING CONTRACT UNITS**

### **a. Selection of tenants**

1. During the term of the HAP contract, the owner must lease contract units only to eligible families selected from the waiting list for the PBV program in accordance with 24 CFR 983.251.
2. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.
3. Consistent with HUD requirements and Federal civil rights and fair housing requirements, the owner may apply its own nondiscriminatory tenant selection procedures in determining whether to admit a family referred by the PHA for occupancy of a contract unit. Where applicable, the PHA may place families referred by the owner on its PBV waiting list.
4. An owner must promptly notify in writing any rejected applicant of

the grounds for any rejection. The owner must provide a copy of such rejection notice to the PHA.

5. The PHA must determine family eligibility in accordance with HUD requirements.
6. The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.
7. If an in-place family is determined to be eligible prior to placement of the family's unit on the HAP contract, the in-place family must be placed on the PBV waiting list (if the family is not already on the list) and given an absolute selection preference. If the PHA's waiting list for PBV assistance is not a project-specific waiting list, the PHA must refer the family to the applicable project owner for an appropriate-size PBV unit in the specific project.
8. The owner is responsible for screening and selection of the family to occupy the owner's unit.

**b. Vacancies**

1. The PHA and the owner must make reasonable, good faith efforts to minimize the likelihood and length of any vacancy in a contract unit.
  - a. If an owner-maintained waiting list is used, in accordance with 24 CFR 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit and refer the family to the PHA for final eligibility determination. The PHA must make every reasonable effort to make such final eligibility determination within 30 calendar days.
  - b. If a PHA-maintained waiting list is used, in accordance with 24 CFR 983.251, the owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit, and the PHA must, after receiving the owner notice, make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days.
2. The owner must lease vacant contract units only to families determined eligible by the PHA.

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

## **10. TENANCY**

### **a. Lease**

The lease between the owner and each assisted family must be in accordance with HUD requirements. In all cases, the lease must include the HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

### **b. Termination of tenancy**

1. The owner may terminate a tenancy only in accordance with the lease and HUD requirements.
2. The owner must give the PHA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

### **c. Family payment**

1. The portion of the monthly rent to owner payable by the family (“tenant rent”) will be determined by the PHA in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.
2. The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
3. The owner may not demand or accept any rent payment from the

tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess rent payment to the tenant.

4. The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.
5. The PHA is responsible only for making the housing assistance payments to the owner on behalf of the family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or any other claim by the owner.

**d. Other owner charges**

1. Except as provided in paragraph 2, the owner may not require the tenant or family members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.
2. In assisted living developments receiving project-based voucher 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.
3. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenant in the premises.

**e. Security deposit**

1. The owner may collect a security deposit from the family.
2. The owner must comply with HUD and PHA requirements, which may change from time to time, regarding security deposits from a tenant.
3. The PHA must prohibit the owner from charging assisted tenants

security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

4. When the family 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 family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
5. If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the family. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

#### **11. FAMILY RIGHT TO MOVE**

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

#### **12. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS**

The PHA subsidy standards determine the appropriate unit size for the family size and composition. The PHA and owner must comply with the requirements in 24 CFR 983.260. If the PHA determines that a family is occupying a wrong-size unit, or a unit with accessibility features that the family does not require and the unit is needed by a family that requires the accessibility features (see 24 CFR 8.27), the PHA must: (1) within 30 days from the PHA's determination, notify the

family and the owner of this determination; and (2) within 60 days from the PHA's determination, offer the family continued housing assistance, pursuant to paragraph (b) of this section.

### **13. PROHIBITION OF DISCRIMINATION**

- a.** The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.
- b.** The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 28 CFR part 35; applicable regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).
- c.** The owner must comply with the Violence Against Women Act, as amended, and HUD's implementing regulation at 24 CFR part 5, Subpart L, and program regulations.
- d.** The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes and all related rules and regulations.

### **14. PHA DEFAULT AND HUD REMEDIES**

If HUD determines that the PHA has failed to comply with the HAP contract, or has failed to take appropriate action to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under the HAP contract, HUD may assume

the PHA's rights and obligations under the HAP contract, and may perform the obligations and enforce the rights of the PHA under the HAP contract.

**15. OWNER DEFAULT AND PHA REMEDIES**

**a. Owner default**

Any of the following is a default by the owner under the HAP contract:

1. The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the housing quality standards.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the HAP contract.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
  - a. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
  - b. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

**b. PHA remedies**

1. If the PHA determines that the owner has breached the HAP contract, the PHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination.

The provisions of 24 CFR 983.208 apply for HAP contract breaches involving failure to comply with HQS. For any other contract termination due to breach, 24 CFR 983.206(b) on provision of tenant-based assistance applies.

2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA rights and remedies against the owner under the HAP contract include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.
4. The PHA may exercise any such contractual remedy respecting a contract unit even if the family continues to occupy the unit.

**c. PHA remedy is not waived**

The PHA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

**16. OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR PHA**

**a. Required information**

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.

**b. PHA and HUD access to premises**

The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

**17. PHA AND OWNER RELATION TO THIRD PARTIES**

---

**a. Injury because of owner action or failure to act**

The PHA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

**b. Legal relationship**

The owner is not the agent of the PHA. The HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

**c. Exclusion of third-party claims**

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

**d. Exclusion of owner claims against HUD**

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

**18. PHA-OWNED UNITS**

Notwithstanding Section 17 of this HAP contract, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.57 regarding PHA-owned units.

**19. CONFLICT OF INTEREST**

**a. Interest of members, officers, or employees of PHA, members of local governing body, or other public officials**

1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the HAP contract.

2. HUD may waive this provision for good cause.

**b. Disclosure**

The owner has disclosed to the PHA any interest that would be a violation of the HAP contract. The owner must fully and promptly update such disclosures.

**c. Interest of member of or delegate to Congress**

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of this HAP Contract or to any benefits arising from the contract.

**20. EXCLUSION FROM FEDERAL PROGRAMS**

**a. Federal requirements**

The owner must comply with and is subject to requirements of 2 CFR part 2424.

**b. Disclosure**

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or non-procurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

**21. TRANSFER OF THE CONTRACT OR PROPERTY**

**a. When consent is required**

1. The owner agrees that neither the HAP contract nor the property may be transferred without the advance written consent of the PHA in accordance with HUD requirements.
2. "Transfer" includes:
  - a. Any sale or assignment or other transfer of ownership, in

any form, of the HAP contract or the property;

- b. The transfer of any right to receive housing assistance payments that may be payable pursuant to the HAP contract;
  - c. The creation of a security interest in the HAP contract or the property;
  - d. Foreclosure or other execution on a security interest; or
  - e. A creditor's lien, or transfer in bankruptcy.
3. If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the PHA pursuant to paragraph a for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph a for transfer of any interest of a general partner.

**b. Transferee assumption of HAP contract**

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the PHA has consented in advance, in writing to such transfer, and the transferee has agreed in writing, in a form acceptable to the PHA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

**c. Effect of consent to transfer**

1. The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
2. The PHA's consent to transfer of the HAP contract or the property does not to change the terms of the HAP contract in any way, and does not change the rights or obligations of the PHA or the owner

under the HAP contract.

3. The PHA's consent to transfer of the HAP contract or the property to any transferee does not constitute consent to any further transfers of the HAP contract or the property, including further transfers to any successors or assigns of an approved transferee.

**d. When transfer is prohibited**

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or non-procurement programs.

**22. SUBSIDY LAYERING**

A subsidy layering review is not required for existing housing projects.

**23. OWNER LOBBYING CERTIFICATIONS**

- a. The owner certifies, to the best of owner's knowledge and belief, that:
  1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
  2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

**24. TERMINATION OF HAP CONTRACT FOR WRONGFUL SELECTION OF CONTRACT UNITS**

The HAP contract may be terminated upon at least 60 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

**25. NOTICES AND OWNER CERTIFICATIONS**

- a. Where the owner is required to give any notice to the PHA pursuant to the HAP contract or any other provision of law, such notice must be in writing and must be given in the form and manner required by the PHA.
- b. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

**26. NOTICE OF TERMINATION OR EXPIRATION WITHOUT EXTENSION**

- a. An owner must provide notice to the PHA, and to the affected tenants, not less than 1 year prior to the termination of a PBV HAP contract. The term “termination” for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of PHA and owner per 24 CFR 983.206(e), or an owner’s refusal to renew the HAP contract.
- b. If an owner fails to provide the required notice, the owner must permit 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 and PHA may agree to extend the terminating contract for a period of time sufficient to provide tenants with the required notice, under such terms as HUD may require.

**27. FAMILY’S RIGHT TO REMAIN**

If the units continue to be used for rental housing upon termination or expiration of the HAP contract without extension, each assisted family occupying a contract unit who has been issued a tenant-based voucher by the PHA may elect to use its tenant-based assistance to remain in the project, subject to the following: (1) the unit must comply with HUD’s HQS; (2) the PHA must determine or have determined that the rent for the unit is reasonable; (3) the family must pay its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-paid utilities) exceeds the applicable payment standard (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy shall not apply); and (4) the owner may not refuse to initially

lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the grounds set forth in 24 CFR 983.206(b)(4).

**28. ENTIRE AGREEMENT; INTERPRETATION**

- a.** The HAP contract, including the exhibits, is the entire agreement between the PHA and the owner.
- b.** The HAP contract must be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements. Any regulatory citation specifically included in this HAP contract is subject to any subsequent revision of such citation.