

## Chapter 21

### PROJECT BASED VOUCHER (PBV) PROGRAM

[24 CFR 983]

#### INTRODUCTION

The Sonoma County Housing Authority (Housing Authority) implemented a project-based assistance program as part of its Section 8 Housing Choice Voucher Program in 2004. Up to 20% of the Housing Authority's Annual Contributions Contract (ACC) may be made available for this program which attaches the funding to specific units rather than using it for tenant-based assistance. With HUD's approval, an additional 10% of the Housing Authority's Annual Contributions Contract (ACC) units may be made available under the Project Based Voucher program for units which are exclusively available to families eligible for supportive services or units exclusively available to elderly families. The Housing Authority will determine the availability of vouchers and the need for project-based assistance.

The Project-Based Assistance (PBV) Program attaches Section 8 rental assistance to selected units for a period of up to 20 years plus the allowable maximum 20 year extension pending the availability of funding. The Housing Authority implemented the PBV Program due to the difficult rental market of Sonoma County and its impact on the supply of affordable housing. Project-basing units under this program will create a stable, long-term resource of affordable housing and will help ensure the preservation of and continued access to the existing stock of affordable housing. The PBV Program will also serve as an additional marketing tool to attract owner participation in providing units for low-income participants. The following policy is established in compliance with the PBV Program Final Rule dated October 13, 2005 regarding 24 CFR Section 983, and the Housing Opportunity Through Modernization Act (HOTMA) of 2016 which outline the procedures by which the Sonoma County Housing Authority will select units to receive rental assistance through its Project Based Assistance Program for new construction projects, rehabilitated projects, and existing housing.

The Sonoma County Housing Authority's PBV Program will be consistent with the Housing Authority Annual Plan which includes a statement indicating the maximum number of total PBV units that will be placed under contract by the Housing Authority. No more than PBV assistance in any PBV project may not exceed the greater of -25 units or 25% of the units in any PBV project (see glossary for definition of project). If a project has 25 or fewer units, the Housing Authority may place every unit in the project under the PBV HAP contract. Other exceptions to the project limit may be available under any of the following circumstances:

- Project consists of ~~may receive assistance except for~~ single family dwellings (four or fewer units)
- Dwelling units are specifically designated for elderly families
- Dwelling units are specifically designated for veterans
- Dwelling units are designated for families requiring supportive services. Supportive services offered must be clearly identified and reasonably available to assisted residents

for a period of no less than one year beginning the first day of each resident's tenancy. PBV assisted residents are not required to participate in supportive services.

- Dwelling units are specifically designated for families which meet the definition of homeless under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR §578.3.
- Project is in a census tract with a poverty rate of less than 20% (may be subject to a PBV cap of up to 40%)
- ~~, dwellings specifically designated for elderly, or dwellings specifically designated for disabled families.~~ Exception categories are further defined in Part G of this Chapter.

Note: For purposes of this Chapter the term "Owner" and "PBV Owner" are used interchangeably and both refer to "PBV Owner" as defined in the glossary.

#### **A. SELECTION OF PBV OWNER PROPOSALS**

The Housing Authority will select PBV proposals by either of the following two methods.

- 1) Request for Proposals (RFP) procedure in accordance with the provisions of this Chapter.
- 2) Non competitive award procedure in accordance with the provisions of this Chapter.

#### **B. PROCESS FOR SELECTING PBV UNITS BY MEANS OF A REQUEST FOR PROPOSALS (RFP)**

##### **Advertising Procedures**

The Housing Authority will advertise on its website and in a newspaper of general circulation, currently the **Press Democrat**, by publishing a public notice that indicates that the Housing Authority will accept applications from property owners for the purpose of selecting projects to be assisted under a PBV Program.

The advertisement will be published in a newspaper of general circulation one time and will remain on the Housing Authority's website until such time that the application period is closed. The notice will include the following information:

- Number of vouchers the Housing Authority will make available under the PBV program.
- Number of units in a building that may be project-based.
- Type of units (existing, new construction and/or rehabilitation) that will be considered for project-basing.
- Application Deadline (at least 30 days after the last published date of advertisement).
- Statement that participation in the program requires compliance with Fair Housing and Equal Opportunity requirements, and that the Federal Labor Standard provisions may be applicable for new and rehabilitation projects.

- The Housing Authority's selection policies as outlined below in Application Review.

## **Application Requirements and Evaluation Criteria**

### **Application Submission Deadline**

Owner applications will be accepted until the published deadline at the Housing Authority Office indicated on the RFP. This deadline will be a date at least 30 days after the publication date of the advertisement. The Housing Authority will date and time stamp all applications upon receipt. Applications received after the published deadline date will not be accepted for consideration under the RFP process. Postmarks are not acceptable.

### **Incomplete and Non-Responsive/Non-Compliant Applications**

If a supporting document required by the RFP is not under the control of the applicant and cannot be obtained within the filing deadline, the applicant must include a written explanation in the application detailing the cause of the delay and the anticipated date the document will be delivered. The Housing Authority will review the information provided and accept the application, but classify it as non-responsive pending receipt of the document. The application will be re-dated upon receipt of the document. In no case will documentation be accepted more than ten (10) days after the final deadline.

If the Housing Authority finds that an application is found to be non-responsive or non-compliant with the RFP, written selection criteria and procedures, or HUD program regulations, it will be rejected and returned to the applicant with notification stating the reason for rejection.

In cases where the application meets the minimum information requirements, but is defective through typographical or minor calculation errors, the application will be processed.

The Housing Authority reserves the right to reject applications at any time for misinformation, errors, or omissions of any kind, no matter how far they have been processed.

## **C. PROCESS FOR SELECTING UNITS ON NON-COMPETITIVE BASIS**

The Sonoma County Housing Authority may select, without competition, a proposal for project based housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals, 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.

Additionally, the PHA may add units to an existing PBV HAP ~~Contract~~ at any time during the term of the PBV HAP contract without engaging in a competitive process ~~in order to preserve funding or provide additional resources to serve homeless families.~~

Non-Competitive proposals can be submitted to the Housing Authority at any time on a form provided by the Housing Authority. The Housing Authority will select proposals for PBV assistance on a non-competitive basis, in cases where one or more of the following circumstances exist:

- The project has been awarded funding through the CDC's HOME competitive selection process (This does not include HOME Tenant-Based Assistance awards).
- The project has been awarded 9% low-income housing tax credit (LIHTC) or other comparable LIHTC
- Any other federal, State or local government affordable housing program that awards funding for the development of new housing units or the rehabilitation of existing housing that is designed to be affordable to individuals and families at or below 80 percent of the area median income (based upon the family composition).

In cases where non-competitive awards are made by SCHA, the developer/owner must do all of the following:

- Demonstrate that the financial analysis of the earlier competitive selection proposal demonstrated project feasibility without PBV assistance.
- Clearly document the PBV proposal to demonstrate what circumstances have changed so that PBV assistance is now needed for project feasibility.
- Agree that all households to be assisted with PBV assistance must be at 30% AMI or below.
- Agree to take the lead in initiating and completing the required subsidy-layering review and environmental impact report per HUD rules.

The total number of PBV units awarded will be within the allowed maximum number per the Housing Authority Annual Plan. PBV awards are made in accordance with this policy and at the discretion of the CDC Executive Director.

The Housing Authority will publish the award of any units under the PBV Program in a newspaper of general circulation. Every effort will be made to publish the results of any awards under the PBV Program within 30 days of the award date.

#### **D. APPLICATION REVIEW AND AWARD PROCESS FOR COMPETITIVE PBV AWARDS**

##### **Application Review Panel**

The Executive Director of the Housing Authority, or his/her designee, will appoint a PBV selection panel of at least three people who will review, evaluate and select applications in



accordance with the provisions of this Chapter. The committee will score applications and submit its recommendations to the Executive Director within 45 days of PBV application period.

### **Application Review**

The Housing Authority will review all applications. Before selecting units, the Housing Authority will determine that each application is responsive to and in compliance with the Housing Authority's written selection criteria and procedures, and in conformity with HUD program regulation and requirements at 24 CFR 983 including the following items:

1. Evidence of site control.
2. Certification that the owner and other project principles are not on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs.
3. Proposed initial gross rents must not exceed 110% of the established Fair Market Rents (FMR) or any HUD-approved "exception payment standard" for the area where the housing is located.
4. Property must meet applicable eligibility requirements under Section 983 and HUD environmental regulations as per 24 CFR parts 50 and 58. (Does not apply for existing housing projects).
5. No rehabilitation or construction has commenced prior to the execution of the Agreement to Enter into a HAP Contract (AHAP), as evidenced by Housing Authority inspection. (Does not apply to existing housing).
6. Proposed number of units to be project-based does not exceed the greater of 25 units or 25% of the total units in the project (see definition of project in glossary), except in the case of a housing project for seniors or persons with disabilities or families that are receiving supportive services. In which case up to 100% of the units in such buildings may be proposed for PBV assistance.
7. The site is located in a census tract with a poverty rate of not more than 20%. Projects located in areas with higher poverty rates may also be considered, but the owner must submit justification for the need to project-base their development in such an area.
8. For rehab only: Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are rehabilitated, pursuant to an Agreement between the Housing Authority and owner, for use under the PBV program (as evidenced by Housing Authority inspection).
9. For existing housing only: Property meets the definition of "existing housing" for purposes of the PBV Program, if the units can be brought into HQS compliance within 45 days of proposal selection. All units must pass HQS before execution of the HAP contract.

10. Project meets requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

11. For rehab and existing housing, current tenants must be low-income and meet income eligibility requirements for the Section 8 Voucher Program. The Housing Authority may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

PBV projects must comply with Section 983.57 regulations regarding site and neighborhood standards.

### **RFP Evaluation and Ranking Process**

Proposals that meet the requirements will be evaluated and ranked according to the rating and ranking factors described in the RFP. Additional points will be granted to projects which meet the following requirements:

- Outside an area or census tract of minority concentration (As defined by HUD)
- Outside an area or census tract of concentrated publicly supported housing of the same occupancy type of the proposal

A PBV Ranking List will be prepared according to points awarded to each proposal. The application scoring the highest points and that is responsive to and in compliance with the Housing Authority's written selection criteria and procedures, and HUD program regulations, will be awarded project-based vouchers up to the amount requested (and allowed per regulations and Housing Authority policy) for the particular development, but not to exceed the number of vouchers advertised as available for the program.

If, after awarding the highest scoring application, there are still vouchers available, the Housing Authority will award the next highest ranking applications until the available vouchers have been assigned. If the Housing Authority determines that an application is eligible for PBV funding but cannot be fully funded at the amount requested by the owner, the owner will be given the opportunity to receive partial funding.

If a proposal does not meet the requirements as indicated above, it will be designated as non-compliant and a notice to that effect, identifying the disqualifying factor, will be sent to the applicant.

### **Award of Funding**

The Housing Authority will give prompt written notice to the party that submitted a selected proposal. The Housing Authority will also give prompt public notice of such selection in a newspaper of general circulation, currently the **Press Democrat**, by publishing a public notice of the selection.

## **Tied Applications**

In the case of a tie score between two or more applications and not enough units available to award each tied application, the following factors will be considered to determine the application to be selected:

1. The application that will provide the most number of units to be project-based will be awarded.
2. The application with the earliest submittal date and time.

Applications meeting the requirements as described above will be awarded Project-Based Assistance in the order that they are received (or for RFPs, as of the date they are considered “complete”; see Incomplete and Non-Responsive/Non-compliant Applications) until the available PBV Vouchers are assigned. If the Housing Authority determines that an application is eligible for PBV funding but cannot be fully funded at the amount requested by the owner, the owner will be given the opportunity to receive partial funding.

## **E. APPLICATION FORMAT AND CONTENT**

The following guidelines apply to all projects submitted for PBV funding.

Owner applications are to be completed using the applicable forms provided by the Housing Authority and/or format described in the Request for Proposals.

The application will list ineligible properties and will state that properties awarded PBV must meet the property requirements as indicated in HUD regulations and as pertaining to each type of housing (new construction, rehabilitation or existing), including the site and neighborhood standards, zoning requirements, per unit minimum cost factor (rehab only), and other Federal Requirements.

The application will require that applications from owners must meet the requirements listed above and must contain the following information:

1. A detailed description of the housing project including:
  - a. The number of buildings in the project, and identification, by building, of the number of units by size (square footage), bedroom count and bathroom count.
  - b. A listing of amenities and services.
  - c. A detailed description of the supportive services provided (or to be provided) for the residents. Include information on the type of services, the frequency the services are offered, whether the services are provided on-site and whether there is a fee charged.
  - d. The poverty rate of the census tract in which the site/project is located.

- e. A description of the area in which the project is located, including a list of all employment centers, schools or colleges, public transportation, health facilities, and parks and recreational areas that are in the general area of the site/project and the distance of each from the site.
- f. The estimated dates for the commencement and completion of construction. (Does not apply for existing housing projects.)
- g. Architectural schematic level drawings of the proposed project including elevations, unit plans, and the site plan. (Does not apply for existing housing projects.)

For rehabilitation, the description must describe the property as is and must also describe the proposed rehabilitation.

- 2. Evidence of site control.
- 3. Evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations, or evidence to indicate that the needed rezoning is likely to be obtained and will not delay the project. (Does not apply to existing housing projects)
- 4. The current (does not apply to new construction) and proposed contract rent per unit, including units to be project-based, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost of each unit type for the first year of occupancy.
- 5. A statement identifying:
  - a. A list of the persons (families or businesses) occupying the property on the date of the submission of the application. If families, include their address, unit size, family size, current rent and approximate annual income. (Does not apply to new construction.)
  - b. The number of persons to be displaced, temporarily relocated or moved permanently within the building or complex; (Applies only to rehabilitation projects.)
  - c. The estimated cost of relocation payments and services, and the sources of funding; (Does not apply for existing housing or new construction projects)
  - d. The organization(s) that will carry out the relocation activities (Does not apply to existing housing or new construction); and
- 6. Information regarding the owner and other project principals, including:

- a. The identity of the owner and other project principals and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; and
- b. Certification showing that the above-mentioned parties are not on the U.S. General Services Administration list of parties excluded from Federal procurement and non-procurement programs; and
- c. A disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the HAP contract; and
- d. Information on the qualifications and experience of the principal participants.

Information concerning any participant who is not known at the time of the owner's submission must be provided to the Housing Authority as soon as the participant is known.

7. The owner's plan for managing and maintaining the units and identification of the proposed property management agent.
8. A Project Financing Plan with evidence of financing or lender interest and the proposed terms of financing. Financing Plans which are dependent upon future awards of funding from the Sonoma County Community Development Commission through a competitive process are not eligible (Does not apply for existing housing projects.)
9. Basic project financing schedules to include the following:
  - a. A sources and uses of funds table to include the required estimate of construction costs. (Does not apply to existing housing.)
  - b. A detailed estimate of anticipated project construction costs prepared by either a general construction contractor deemed reasonably qualified to construct the project or a professional cost estimating firm. (Does not apply to existing housing.)
  - c. A twenty (20) year operating period pro forma cash flow analysis presenting anticipated initial contract rents for all units, both assisted and unassisted through PBV. (Does not apply to existing housing.)
  - d. For existing housing only: Operating proforma statement and current year operating budget including estimated Section 8 subsidy amount.
10. The proposed term of the HAP contract; and
11. Such other information as the Housing Authority believes necessary as identified in the Public Notice, RFP/application, or in the selection and/or ranking criteria.

## **Other Requirements**

The application will inform applicants that the following items must be completed before the Housing Authority can execute an Agreement or Housing Assistance Payments Contract with any selected owner.

1. Establish the rents in accordance with Section 983.
2. Complete a subsidy layering contract rent review when required. Property must meet applicable eligibility requirements under Section 983, including eligible and ineligible properties, other Federal requirements, and site and neighborhood standards.
3. Obtain environmental clearance in accordance with Section 983. In cases of existing housing the responsible entity ("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.
4. For rehabilitation projects, the owner must prepare work write-ups and, where determined necessary by the Housing Authority, specifications and plans. The Housing Authority has flexibility to determine the appropriate documentation to be submitted by the owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the Housing Authority.
5. For existing and rehabilitation projects, the owner must have an accessibility survey completed for the property. Accessibility survey should include all common areas and areas available to the general public, all walkways, parking areas, and units designated as accessible. If deficiencies exist a transition plan must be submitted.
6. Before an Agreement is executed for new construction units, the owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications complies with housing quality standards, local codes and ordinances, and zoning requirements.

## **F. FACTORS FOR SELECTING APPLICATIONS**

The following factors will be used by the Housing Authority to select applications for the PBV Program:

- Site
- Design
- Previous Experience of Owner and Participants in Development, Marketing and Management of Affordable Low-income Housing
- Feasibility of the Project as a Whole (including likelihood of financing and marketability)
- Local Objectives

- Units are Located Outside Areas/Census Tracts of Minority or Poverty Concentration as defined by HUD
- Design exceeds the requirements for ADA accessible units identified in 24 CFR § 8.22 and 24 CFR 983
- Design meets the requirements for Design and Construction in 24 CFR § 100.205

#### **G. OTHER PROGRAM GUIDELINES**

The following guidelines apply to all projects awarded with project-based assistance.

##### **Contract Term**

The initial term of the Housing Assistance Payment Contract may be up to 20 years and is subject to future availability of appropriations and future availability of funding under the Housing Authority's Annual Contribution Contracts.

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

At the discretion of the Housing Authority, the HAP contract may provide for vacancy payments to the owner for a Housing Authority-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 moveout month. The amount of the vacancy payment to the owner will be equal to the contract rent in effect at the time of the vacancy for a period not to exceed 60 days. The HAP contract with the owner will contain the terms under which vacancy payments will be made.

##### **PBV HAP Contract Extension**

The Housing Authority may agree to enter into an extension of the HAP contract at the time of the initial HAP contract execution or anytime before the expiration of the contract if the Housing Authority determines an extension is appropriate to continue providing affordable housing for low-income families. The maximum term for an extension of the HAP contract is 20 years. The Housing Authority may allow multiple extensions, however, such extensions shall not exceed 20 years, cumulatively. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

The Housing Authority will provide the owner 12-month's notice of the expiration of the PBV HAP contract, and invite the owner to submit a letter requesting an extension. The Housing Authority may extend the term of the contract administratively, without an open competition, for one or more additional terms of up to 20 years total if the Housing Authority determines an extension is required for the project to continue providing housing for low-income families at or below 50% AMI.

Extension of PBV HAP contracts will be considered on a case by case basis, including whether (a) to extend for a full 20 years or a shorter timeframe, and (b) the project is able continue housing families at or below 50% AMI with a smaller number of PBVs than originally approved (i.e. reduce the number of PB units at the property). When determining whether or not to extend an expiring PBV contract, for how long, and the number of units, the Housing Authority within its sole discretion will consider several factors including, but not limited to:

- The total HAP cost of the contract extension and the amount of available budget authority;
- The staffing capacity of the Housing Authority to continue administering the PBV contract;
- 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;
- Evidence of financial needs of the property (including an examination of operating, reserve, and other budgets and financial documentation);
- Demonstrated need of the minimum number of project based vouchers required to achieve long-term affordability of the housing including (i) financing debt for rehabilitation activity, (ii) meeting the contractual obligation to rent to households at or below 50% of AMI, and (iii) covering a reasonable operating deficit;
- Current demand for the units by households with tenant based or project based assistance; and
- Whether the funding could better serve extremely low-income households at another property seeking PBV assistance (or new construction project), or in the tenant based voucher program.

### **Tenant Selection & Waitlist Organization**

Many of the policies and provisions of the tenant-based voucher regulations also apply to the PBV program. This includes requirements related to determining eligibility and waiting list preferences. The Housing Authority will centrally maintain project-specific waitlists for developments with project based vouchers. During times of open waitlist, applicants will be selected for placement on each waitlist according to a random lottery. Placement on the waitlist will be assigned ~~according to a randomly assigned applicant ID number utilizing randomizing software.~~ When vacancies in project based units occur, tenants will be selected according to their assigned waitlist position. Those with preferences as identified in Chapter 4 of this Administrative Plan, will be referred first and in order of their waitlist position. When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the Housing Authority will first refer families who require such features to the owner in the order of their applicant ID number position on the waitlist. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

HUD regulations mandate that the Housing Authority apply income targeting requirements that require 75% of the families admitted to the Section 8 Housing Choice Voucher Program (including PBV) be families whose annual income does not exceed 30% of Area Median Income



(AMI). Consequently, the Housing Authority may require the residents of units selected to be project-based to meet this income requirement.

Applicants who will occupy vacant or turnover units with PBV assistance are selected from the appropriate PBV waiting list. If there are vacant or turnover units specified for a specific population (i.e. disabled or elderly, household size) and there are no applicants on the PBV waitlist needing that type of unit, the Housing Authority may draw names from its Section 8 waitlist. At times the Housing Authority HCV and PBV waitlists are open simultaneously, the Housing Authority must ensure that applications for all open waitlists are made available.

Families that have previously been issued a tenant based voucher and are interested in leasing a vacant project based unit may surrender their tenant based voucher and move into the project based unit, without having to reapply to the SCHA waiting list. All other eligibility factors, including income targeting apply. At the end of the project based lease term, the family may be eligible to receive another tenant based voucher if they want to move and tenant based vouchers are available to be issued (see Family Choice to Move with Continued Assistance on page 21-11 for more information).

In addition to site-based waiting lists for each PBV property, the Housing Authority shall maintain a separate wait list for units designated for assistance through the Continuum of Care's Coordinated Entry System (CES). These units are required to be used to house homeless families that are in the CES for housing assistance referral. When vacancies occur at the PBV properties in these designated units, the owner shall request a suitable referral from the Coordinated Entry System. Once the owner has reviewed the application and accepted the referral for housing assistance, the owner shall refer the family to the Housing Authority's initial eligibility team for program eligibility determination and leasing. Families will only be placed on this waiting list if they are deemed suitable for occupancy by the owner and immediately processed for intake.

This waiting list will not have a preference designation since all additions to the list will immediately be designated for specific units within the PBV portfolio. The only qualifier will be the date and time of the applicant's addition to the CES wait list.

Units eligible for CES assistance and priority are as follows:

- Palms Inn Apartments – 3345 Santa Rosa Avenue, Santa Rosa, CA

Note: This list may be modified from time to time to reflect new units added to the CES portfolio with PBV designations

#### **Disapproval By Landlord [24 CFR 983.251(E)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waitlist or any other PBV waitlists. Rejection by the PBV owner, however, shall be grounds for removal from the PBV site-based waitlist.

Upon request, the owner shall provide the Housing Authority with the basis for which an applicant was denied admission.

## **Moves**

### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]**

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

If the Housing Authority offers the family a tenant-based voucher, the Housing Authority must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the Housing Authority).

If the Housing Authority offers the family another form of assistance that is not a tenant-based voucher, such as another PBV unit, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the Housing Authority, or both, the Housing Authority must terminate the housing assistance payments for the unit at the expiration of a reasonable period, generally 30 days from the date of the offer to accept the offer and move out of the PBV unit.

If the family does not move out within this 30-day time frame, the Housing Authority will terminate the housing assistance payments at the expiration of this 30-day period. The Housing Authority may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **Family Choice to Move with Continued Assistance**

A family who resides in a Project Based Voucher unit for at least twelve (12) months may move with continued assistance with a tenant-based Housing Choice Voucher or its equivalent if and when one is available. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the Housing Authority. If the family wishes to move with continued tenant-based assistance, the family must contact the Housing Authority to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with these requirements, the Housing Authority will offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the Housing Authority will give the family priority to receive the next available opportunity for continued tenant-based assistance. If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

## **Rent Calculation**

HUD regulations provide that the PBV rents must be rent reasonable in relation to rents charged in the private market for comparable unassisted units in the area. The Housing Authority will use its standard Rent Reasonableness determinations (See Chapter 11).

Contract rents are limited to 110% of the established FMR or HUD-approved “exception payment standard” and include the utility allowance for both the initial rent and annual adjustments.

For certain tax credit units, the rent limits are determined differently than for other PBV units. The Housing Authority will follow HUD regulations in determining rent limits for these units.

The Housing Authority will provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. When a subsidy layering review is conducted, the Housing Authority may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

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 credits.

NOTE: When determining comparability, the units in the building receiving a Low Income Housing Tax Credits (LIHTC) shall not be used since these units are considered to be assisted units.

## **Exception Categories**

(a) Homeless. The units are specifically made available to house individuals and families who meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR §578.3. The definition of homeless is included below for convenience:1 (i) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

• An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

• An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

• An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution; (ii) An individual or family who will imminently lose their

primary nighttime residence, provided that: (iii) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(iv) Any individual or family who:

- The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
- No subsequent residence has been identified; and
- The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;
- Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 1437e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
- Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
- Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
- Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- Has no other residence; and
- Lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, to obtain other permanent housing.

(b) Veterans. The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define "veteran" in its Administrative Plan for purposes of determining if the units are eligible for this exception. For example, a PHA may choose to include in its definition of "veteran" an individual with an "other than dishonorable" discharge

status who is ineligible for healthcare provided through the Veterans Health Administration. PHAs have discretion in establishing verification of eligibility.

HUD-awarded vouchers specifically designated for project-based assistance out of HUD-VASH appropriated funding are already excluded from the program cap and are not to be included under this 10 percent exception category. See Attachment F of this notice for additional information.

(c) Supportive services. The units provide supportive housing to persons with disabilities or to elderly persons. For the purpose of this exception, supportive housing means: A project that makes supportive services available for all of the PBV assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PBV assisted tenant must not be required to participate in the supportive services as a condition of living in an excepted unit. Such supportive services may include (but are not limited to):

- meal service adequate to meet nutritional need;
- housekeeping aid;
- personal assistance;
- transportation services;
- health-related services;
- case management;
- child care;
- educational and employment services;
- job training;
- counseling; or
- other services designed to help the recipient live in the community as independently as possible.

In accordance with 24 CFR §983.354, with the exception of an assisted living facility, the owner of a PBV project may not require the assisted family to pay charges for meals or supportive services, and non-payment of such charges by the family is not grounds for termination of tenancy. In the case of an assisted living facility (as defined in 24 CFR §983.3) receiving PBV assistance, owners may charge families for meals or supportive services. These charges may not be included in the rent to owner or the calculation of reasonable rent.

(d) Poverty rate of 20 percent or less. The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates. A project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located.