

12-III.A.	Termination Of Tenancy By The Owner - Overview	12-15
12-III.B.	Grounds For Owner Termination Of Tenancy	12-15
12-III.C.	Eviction	12-16
12-III.D.	Deciding Whether To Terminate Tenancy	12-17
12-III.E.	Effect Of Tenancy Termination On The Family's Assistance	12-18
CHAPTER 13	OWNERS	
Part I:	Owners In The HCV Program.	13-2
13-I.A.	Owner Recruitment And Retention	13-2
13-I.B.	Basic HCV Program Requirements	13-3
13-I.C.	Owner Responsibilities	13-4
13-I.D.	Owner Qualifications	13-5
13-I.E.	Non-Discrimination	13-8
Part II:	HAP Contracts.	13-9
13-II.A.	HAP Contracts - Overview	13-9
13-II.B.	HAP Contract Contents	13-9
13-II.C.	HAP Contract Payments	13-10
13-II.D.	Breach Of HAP Contract	13-12
13-II.E.	HAP Contract Term And Terminations	13-13
<u>13-II.F.</u>	<u>Change In Ownership / Assignment Of The HAP Contract</u>	<u>13-14</u>
<u>13-II.G.</u>	<u>Foreclosure Change In Ownership / Assignment Of The HAP Contract</u>	<u>13-14</u>
13-II.F.	Change In Ownership / Assignment Of The HAP Contract	13-14
CHAPTER 14	PROGRAM INTEGRITY	
Part I:	Preventing, Detecting, And Investigating Errors And Program Abuse	14-2
14-I.A.	Preventing Errors And Program Abuse	14-2
14-I.B.	Detecting Errors And Program Abuse	14-3
14-I.C.	Investigating Errors And Program Abuse	14-4
Part II:	Corrective Measures And Penalties	14-7
14-II.A.	Subsidy Under- Or Overpayments	14-7
14-II.B.	Family-Caused Errors And Program Abuse	14-7
14-II.C.	Owner-Caused Error Or Program Abuse	14-9
14-II.D.	PHA-Caused Errors Or Program Abuse	14-10
14-II.E.	Criminal Prosecution	14-11
14-II.F.	Fraud And Program Abuse Recoveries	14-11
CHAPTER 15	SPECIAL HOUSING TYPES	
Part I:	Single Room Occupancy	15-2
15-I.A.	Single Room Occupancy - Overview	15-2
15-I.B.	Payment Standard, Utility Allowance, And HAP Calculation	15-2
15-I.C.	Housing Quality Standards (HQS)	15-2
Part II:	Congregate Housing	15-4
15-II.A.	Congregate Housing - Overview	15-4
15-II.B.	Payment Standard, Utility Allowance, And HAP Calculation	15-4
15-II.C.	Housing Quality Standards	15-4
Part III:	Group Homes	15-5
15-III.A.	Group Home - Overview	15-5
15-III.B.	Payment Standard, Utility Allowance, And HAP Calculation	15-5
15-III.C.	Housing Quality Standards	15-5
Part IV:	Shared Housing	15-7
15-IV.A.	Shared Housing - Overview	15-7

Providing Information to Families and Owners

HACCC must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, HACCC must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by HACCC or an owner, the family should advise HACCC. HUD requires HACCC to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, HACCC is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Upon receipt of a housing discrimination complaint, the PHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]

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HACCC Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify HACCC either orally or in writing.

HACCC will attempt to remedy discrimination complaints made against HACCC.

HACCC will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO), the California Department of Fair Employment and Housing and local organizations such as Bay Area Legal Aid.

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

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A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for HACCC, and those in which denial of assistance is optional for HACCC.

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16].

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

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Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- Refusing to process a request for or to provide assistance under portability procedures

Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]

Immediate vicinity means within a three-block radius of the premises.

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Evidence of such criminal activity includes, but is not limited to:

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Any conviction for drug-related or violent criminal activity within the past 2 years.

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~~Any record of eviction from public or privately owned housing as a result of criminal activity within the past 2 years.~~

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In making its decision to deny assistance, HACCC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, HACCC may, on a case-by-case basis, decide not to deny assistance.

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Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

HUD authorizes HACCC to deny assistance based on the family's previous behavior in assisted housing:

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HACCC Policy

HACCC will not deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program.

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HACCC will deny assistance to an applicant family if:

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The family does not provide information that HACCC or HUD determines is necessary in the administration of the program.

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The family does not provide complete and true information to HACCC.

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Any family member has been evicted from federally-assisted housing in the last two years.

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Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

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The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

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If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.

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The family has breached the terms of a repayment agreement entered into with HACCC, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

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A family member has engaged in or threatened violent or abusive behavior toward HACCC personnel.

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Abusive or violent behavior towards HACCC personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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In making its decision to deny assistance, HACCC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, HACCC may, on a case-by-case basis, decide not to deny assistance.

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3-III.D. SCREENING

Screening for Eligibility

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists HACCC in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records HACCC must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

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HACCC Policy

HACCC will perform a criminal background check through local law enforcement for every adult household member.

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If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, HACCC will request a fingerprint card and will request information from the National Crime Information center (NCIC).

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While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose.

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PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

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HACCC Policy

HACCC will use the National Credit Reporting database to screen applicants for admission.

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Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

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HACCC will remove applicants from the waiting list if they have requested that their name be removed in writing, in person or by email. In such cases no informal hearing is required.

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If at any time an applicant family is on the waiting list, HACCC determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

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If a family is removed from the waiting list because HACCC has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding HACCC's decision (see Chapter 16) [24 CFR 982.201(f)].

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The HCV wait list will terminate after 24 months from the date it notified applicants of their initial placement on the wait list. A new HCV wait list will be created thereafter.

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Families removed from the waitlist due to failure to respond to updates or an invitation for certification will be considered for reinstatement to the waiting list for up to 12 months from the date they were removed from the waiting list or the expiration of the waiting list, whichever is earlier.

HACCC Policy

The PHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the PHA determines that discrepancies exist due to PHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

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Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

HACCC Policy

The PHA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

7-I.D. Fixed Income Sources of Income

For any family member with a fixed source of income, HACCC shall determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

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(1) Family member with a fixed source of income is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance;

(ii) Federal, state, local, or private pension plans;

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

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(2) HACCC shall use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. HACCC shall verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party-generated documentation. If no such verification is available, then HACCC shall obtain third-party verification of income amounts in order to calculate the change in income for the source. Application of the COLA will take effect for annual reexaminations due 60 days after the receipt of the notification of COLA amount so that

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completed reexaminations do not require further revision. For example, January 1, COLAs would be implemented on March 1 Annuals.

- (3) For any family member whose income is determined pursuant to a streamlined income determination, HACCC shall obtain third-party verification of all income amounts every 3 years.

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7-I.E. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

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Written Third-Party Verification [Notice PIH 2017-12]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

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Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

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The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

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The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

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HACCC Policy

Third-party documents provided by the family must be dated within 60 days of the PHA request date. Documents older than 60 days (from the PHA interview/determination or request date) is acceptable for confirming effective dates of income.

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If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation.

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As verification of earned income, the PHA will require the family to provide a minimum of the two most current, consecutive pay stubs. If additional pay stubs are submitted, HACCC will utilize up to four consecutive paystubs provided to calculate anticipated income for the next annual recertification. Where a participant or applicant has recently commenced employment, HACCC will utilize however many pay stubs have been received to date and attempt to supplement them with written verification from the employer. At the HACCC's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PHA may request additional paystubs or a payroll record.

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The PHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

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7-III.J. STUDENT FINANCIAL ASSISTANCE [Notice PIH 2015-21]

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Any financial assistance, in excess of amounts received for tuition, fees, and other required charges as defined by the Higher Education Act of 1965, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

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For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

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HACCC Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the PHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

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In addition, the PHA will request written verification of the student's tuition fees, and other required charges amount.

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If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

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7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

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If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents or a *vulnerable youth* in accordance with PHA policy [24 CFR 5.612 FR Notice 4/10/06, and FR Notice 9/21/16].

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The GoSection8 Rent Reasonableness Software utilizes a unit-to-unit comparison, similar to real estate appraisal, where a direct comparison is made between the rent for the subject HCV assisted unit and the rent for unassisted comparable units. Comparable units are drawn from a database of current, real-time market data maintained by the vendor. After identifying specific units to use as comparables based on location, unit type and characteristics, GoSection8 provides similarity and credibility scores and market rent data to determine if the rent is supported by the market data.

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GoSection8 also employs unit-to-market principles to assist staff in making market-based adjustments to rental values. The blended approach - identifying comparable units that are the closest possible match to the proposed HCV assisted unit and then adjusting rental values to address any remaining critical differences that impact market rent - ensures the results are grounded in accurate market-based rental values.

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The GoSection8 Database will return the three units whose similarity and credibility score most closely matches the subject unit. All comparables used to evaluate the rent must have a similarity rating of 90 % or more and a credibility rating of 70 % or more, when available. If three comparables that have similarity ratings of 90% or more and credibility ratings of 70 % or more cannot be found, then a manager must approve the rent reasonableness certification.

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The subject unit rent must be supported by the three comparables to be approved. If the rent is not supported by the three comparables the Estimated Monthly Market Rent (EMMR), will be used. The Estimated Monthly Market Rent, which is the average value of the three adjusted market rents, will be the maximum rent that will be approved. In extenuating circumstances where the Estimated Monthly Market Rent is inappropriate, staff must document the reason for deviating from the EMMR on the Rent Reasonableness Certification.

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Copies of the three comparables and documentation, including the Assisted Unit Survey form, Rent Reasonable Valuation from GoSection8 and the Rent Survey from Yardi for the subject unit will be placed in the client file to support the rent reasonableness determination.

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When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \$458.$

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For properties where the owner has unassisted units at market rent in the same building, the unassisted unit rents will also be considered for rent reasonableness determination.

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HACCC will notify the owner of the rent HACCC can approve based upon its analysis of rents for comparable units. If the comparable rent is lower than that requested by the owner, the owner will be requested to submit information about other comparable units in the market area. HACCC will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 7 calendar days of HACCC's request for information or the owner's request

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner’s breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give HACCC a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family’s unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

HACCC Policy

If the family and the owner mutually agree to terminate the lease for the family’s unit, the family must give HACCC a copy of the termination agreement. HACCC’s Mutual Agreement to Terminate the Lease form must be submitted to HACCC staff before the move can be approved. If the owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)], the family must give HACCC a copy of any owner eviction/termination notice received [24 CFR 982.551(g)].

- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to HACCC, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)].

HACCC Policy

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking, HACCC will request documentation in accordance with section 16-IX.D of this plan.

HACCC reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases HACCC will document the waiver in the family’s file.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- HACCC has terminated the HAP Contract for the family’s unit for the owner’s breach [24 CFR 982.354(b)(1)(i)].

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PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

HACCC must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

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11-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 982.516(b)]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

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Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

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Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income ~~but is not required and may choose whether to verify non-fixed income amounts in years where no fixed income review is required.~~ If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

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PHA Policy

HACCC will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. Fixed income sources are incomes with at least 90 % of the income coming from the fixed income source. HACCC will document in the file how the determination that a source of income was fixed was made.

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For families with at least one source of fixed income, but for which less than 90% of the family's income is from fixed sources, HACCC shall verify and adjust non-fixed income sources annually

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If a family member with a fixed source of income is added, HACCC will use third-party verification of all income amounts for that family member.

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If verification of the COLA or rate of interest is not available, HACCC will obtain third-party verification of income amounts.

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Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

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- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

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The family must be given an opportunity for an informal hearing regarding HACCC's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

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HACCC Policy

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The notice to the family will state the effective dates and amounts of the new family rent payment, new Housing Assistance Payment, the new total Contract Rent and the previous family rent payment. ~~The notice also will state the procedures for requesting a meeting with knowledgeable staff members. If questions and issues are not resolved to the family's satisfaction, they will be provided the opportunity to request an informal hearing with an impartial hearing officer. The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.~~

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11-III.D. DISCREPANCIES

During an annual or interim reexamination, HACCC may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, HACCC may discover errors made by HACCC. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

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A record or records of arrest(s) will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

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In making its decision to terminate assistance, HACCC will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, HACCC may, on a case-by-case basis, choose not to terminate assistance.

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Other Authorized Reasons for Termination of Assistance
[24 CFR 982.552(c), 24 CFR 5.2005(c)]

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HUD permits HACCC to terminate assistance under a number of other circumstances. It is left to the discretion of HACCC whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2005 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault or stalking as reasons for terminating the assistance of a victim of such abuse.

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HACCC Policy

HACCC will not terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

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HACCC will terminate a family's assistance if:

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The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.

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Any family member has been evicted from federally-assisted housing in the last five years.

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~~Any PHA has ever terminated assistance under the program for any member of the family.~~

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Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

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The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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The family has not reimbursed any PHA for amounts HACCC paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

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The family has breached the terms of a repayment agreement entered into with the PHA.

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A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

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Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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HACCC Policy

HACCC will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

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Use of Criminal Conviction Records after Admission [24 CFR 5.903]

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

HACCC is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

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HACCC Policy

HACCC will consider the following facts and circumstances when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property

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The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act

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The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault or stalking

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The owner may terminate tenancy during the term of the lease if any member of the household is:

Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

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The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

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After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant’s lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of PHA policies relating to units in foreclosure.

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12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for PHAs]

Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in HACCC's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for HACCC to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in HACCC's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. PHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

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HACCC Policy

HACCC will conduct owner outreach to ensure that owners are familiar with the program and its advantages. HACCC will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

Distributing printed material about the program to property owners and managers

Contacting property owners and managers by phone or in-person

Holding owner recruitment/information meetings at least once a year

Participating in community-based organizations comprised of private property and apartment owners and managers

Developing working relationships with owners, apartment associations, industry investor groups and real estate brokers associations

To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, HACCC must also provide the kind of customer service that will encourage participating owners to remain active in the program.

HACCC Policy

All PHA activities that may affect an owner’s ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

HACCC will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

HACCC will give special attention to helping new owners succeed through activities such as:

Coordinating inspection and leasing activities between HACCC, the owner, and the family.

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Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.

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Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.

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Contacting owners via emails or texts to disseminate information.

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Additional services may be undertaken on an as-needed basis, and as resources permit.

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13-1.B. BASIC HCV PROGRAM REQUIREMENTS

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HUD requires HACCC to assist families in their housing search by providing the family with a list of landlords or other parties known to HACCC who may be willing to lease a unit to the family, or to help the family find a unit. Although HACCC cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to HACCC their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

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HACCC Policy

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HACCC provides a rental listing service (GoSection8) via the HACCC website (www.contracostahousing.org) for owners who wish to rent their units to HCV clients. HCV families may also access the rental listing via the Internet at www.contracostahousing.org.

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When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. HACCC has no liability or responsibility to the owner or other persons for the family’s behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner’s willingness to lease to the family and to follow the program’s requirements. When submitted to HACCC, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in

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HACCC Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which HACCC gives written notice to the owner, provided that at least 30 calendar days have passed since the written notice. If a 30-day notice was not provided (e.g., notice was given on January 30th), then the contract will terminate at the end of the second calendar month following the calendar month in which HACCC gave written notice to the owner. The owner is not entitled to any housing assistance payment after this period and must return to HACCC any housing assistance payment received after this period.

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If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17]. However if the tenant fails to give the prior owner proper notice because they remain in the assisted unit past the expiration of the 30-day notice or fails to execute a Mutual Rescission of the Lease, the new HAP Contract shall not be approved until a Key Return Form is submitted and the prior assisted tenancy properly terminated.

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When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

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The owner may keep the housing assistance payment for the month when the family moves out of the unit. [24 CFR 982.311 (d)].

13-ILF. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

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The HAP contract cannot be assigned to a new owner without the prior written consent of HACCC.

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An owner under a HAP contract must notify HACCC in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by HACCC.

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Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that HACCC finds acceptable. The new owner must provide HACCC with a copy of the executed agreement.

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HACCC Policy

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HACCC will comply with the terms of the HAP Contract regarding the assignment of the Contract to a new owner (HAP Contract Part B, Section 14).

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Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

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Prior to the change HACCC must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

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Within 14 calendar days of receiving the owner's request, HACCC will inform the current owner in writing whether the assignment may take place.

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The new owner must provide a written certification to HACCC that includes:

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A copy of the escrow statement or other document showing the transfer of title and recorded deed;

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A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

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The effective date of the HAP contract assignment;

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A written agreement to comply with the terms of the HAP contract; and

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A certification that the new owner is not a relative as defined in 13.I.D.

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If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, HACCC will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, HACCC will process the leasing in accordance with the policies in Chapter 9.

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13-II.G. FORECLOSURE [Notice PIH 2010-49]

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Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

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Any state or local law that provides longer time periods or other additional protections for tenants also applies.

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HACCC Policy

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If a property is in foreclosure, HACCC will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

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HACCC will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

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HACCC will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

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In the event that HACCC is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the new owner, HACCC will either use the funds to pay:

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The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, HACCC shall notify the owner within a reasonable time after making the utility payment; or

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For the family's reasonable moving costs, including security deposit costs.

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HACCC will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

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See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

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Exception Payment Standards [982.503(c)(5), Notice PIH 2018-01]

A non-SAFMR PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to SAFMRs@hud.gov to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

Field Code Changed

Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]

PHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

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HACCC Policy

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HACCC will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas.

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~~HACCC must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD approved exception payment standard amount. The total population of all HUD approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.~~

Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to HACCC's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect HACCC's payment standard schedule.

When needed as a reasonable accommodation, HACCC may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. HACCC may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

HACCC Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family

HACCC must schedule and send written notice of the informal review within 14 calendar days of the family's request.

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Informal Review Procedures [24 CFR 982.554(b)]

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

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

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Remote Informal Reviews

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All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations.

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HACCC Policy

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HACCC has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

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In addition, HACCC will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. HACCC will consider other reasonable requests for a remote informal review on a case-by-case basis.

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Conducting Remote Informal Reviews

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The PHA must ensure that the applicant has the right to hear and be heard.

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HACCC Policy

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HACCC will conduct remote informal reviews via telephone conferencing call-in or via videoconferencing. If the informal review will be conducted via videoconferencing, HACCC will ensure that all applicants, applicant representatives, HACCC representatives and the person conducting the informal review can adequately access the platform (i.e., hear, be heard, see, and be seen). If any applicant, applicant representative, HACCC representative, or person conducting the informal review is unable to effectively utilize the videoconferencing platform, the informal review will be conducted by telephone conferencing call-in.

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Whether the informal review is to be conducted via videoconferencing or telephone call-in, HACCC will provide all parties login information and/or conferencing call-in information before the review.

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Informal Review Decision [24 CFR 982.554(b)]

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

HACCC Policy

- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from HACCC utility allowance schedule
- A determination of the family unit size under HACCC's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HACCC Policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

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

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

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HACCC Policy

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

Remote Informal Hearings

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in compliance with HUD regulations.

HACCC Policy

HACCC has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, HACCC will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have child care or transportation that would enable them to attend the informal hearing, or if

the participant believes an in-person hearing would create an undue health risk, HACCC will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

Conducting Informal Hearings Remotely

In conducting any informal hearing remotely, HACCC shall ensure due process and that all parties are able to have full access to the hearing.

HACCC Policy

HACCC will conduct remote informal hearings via telephone conferencing call-in or via videoconferencing. If the informal hearing will be conducted via videoconferencing, HACCC will ensure that all participants, participant representatives, advocates, witnesses, HACCC representatives, and the hearing officer can adequately access the platform (i.e., hear, be heard, see, and be seen).

If any participant, representative, advocate, witness, HACCC representative, or hearing officer is unable to effectively utilize the videoconferencing platform, the informal hearing will be conducted by telephone conferencing call-in.

Whether the informal hearing is to be conducted via videoconferencing or telephone call-in, HACCC will provide all parties login information and/or telephone call-in information before the hearing.

Informal Hearing Procedures

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

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

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

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

HACCC Policy

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

The proposed action or decision of HACCC.

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

The date the proposed action will take place.

A statement that the family may be represented by legal counsel or assisted by other trusted individuals, i.e., social workers.

A statement that file information is available for review upon 48 hours advance notice before the hearing.

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

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy *of HACCC's hearing procedures.

That the family may request a remote informal hearing

If HACCC will require that the hearing be conducted remotely, at the time the notice is sent to the family informing them of the right to request an informal hearing, the family will be notified that the informal hearing will be conducted remotely. The family will be informed of the processes involved in a remote informal hearing and that HACCC will provide technical assistance, if needed, before the informal hearing.

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

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

HACCC Policy

A request for an informal hearing must be made in writing and delivered to HACCC either in person or by first class mail, by the close of the business day, no later than 14 calendar days from the date of HACCC's decision or notice to terminate assistance.

HACCC must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, HACCC may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact HACCC within 24 hours of the scheduled hearing date, excluding weekends and holidays. HACCC will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, the PHA's decision will stand.

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

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

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

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

HACCC Policy

The family will be allowed to copy any documents related to the hearing at a cost of .15 per page. The family must request discovery of ~~HACCC~~PHA documents no later than two full business days prior to the scheduled hearing date (e.g. if the hearing is on Thursday, then by close of business on Monday of the same week)

~~If the hearing will be conducted remotely, HACCC will compile a hearing packet, consisting of all documents HACCC intends to produce at the informal hearing. HACCC will mail copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of HACCC representative and retained by HACCC.~~

~~Documents will be shared electronically whenever possible~~

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

HACCC Policy

~~For in-person hearings, HACCC will not require pre-hearing discovery by HACCC of family documents directly relevant to the hearing.~~

~~If the informal hearing is to be conducted remotely, HACCC will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing. HACCC will scan and email copies of these documents to the hearing officer and HACCC representative the same day.~~

~~Documents will be shared electronically whenever possible.~~

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

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

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

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

HACCC Policy

HACCC has designated the following to serve as hearing officers:

- ~~Manager or above from other departments in the government of the jurisdiction~~
- ~~Manager or above from another Housing Authority~~
- ~~Professional mediators or arbitrators~~
- ~~Any other person who is otherwise qualified to serve~~

Attendance at the Informal Hearing

HACCC Policy

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

- A PHA representative(s) and any witnesses for HACCC
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by HACCC as a reasonable accommodation for a person with a disability

Conduct at Hearings

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

HACCC Policy

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

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

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

HACCC Policy

Only units that that are under a HAP contract that was first executed on or after April 18, 2017, may be covered by the 10 percent exception.

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Prior to issuing assistance for an additional 10 percent of the authorized units for PBV assistance, HACCC shall submit to the HUD Field Office the following:

1. The total number of units authorized under the ACC including HUD-VASH and Family Unification Program (FUP) vouchers and how many units are excluded from the total PBV commitment to date, if applicable;
2. Total number of units currently committed for PBV under HAP, AHAP or selected and specify the number of units excluded from the baseline PBV units;
3. The number of units to which HACCC is proposing to attached PBV assistance through the RFP or selection;

The notice must be submitted to HUD no later than 14 days prior to the issuance of an RFP or selection is made to exceed the 20 percent cap on PBV assistance.

17-IA.1 Units Not Subject To PBV Program Unit Limitation

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

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

1. The unit must meet the following conditions in order to qualify for this exception:
 - (a) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project based on a prior competition or without competition, the unit met at least one of the two following conditions:
 - (i) The unit received one of the following forms of HUD assistance:
 - (a) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).
 - (b) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program.
 - (c) Housing For the Elderly (section 202 of the Housing Act of 1959).
 - (d) Housing for Persons With Disabilities (section 811 of the Cranston- Gonzalez National Affordable Housing Act).
 - (e) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).
 - (f) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).
 - (ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

Part II: PBV Owner Proposals

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17-II.A. OVERVIEW

HACCC must describe the procedures for owner submission of PBV proposals and for HACCC selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, HACCC must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

[24 CFR 983.51]

HACCC must select PBV proposals in accordance with the selection procedures in HACCC's administrative plan. HACCC must select PBV proposals by either of the following two methods.

- HACCC's request for PBV Proposals. HACCC may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to HACCC's request. HACCC may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- HACCC may select proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

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

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

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

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

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

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PHA Policy

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The PHA may attach PBVs to projects owned by the PHA as described above.

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Solicitation And Selection Of PBV Proposals [24 CFR 983.51(c)]

Prior to issuing a request for proposals (RFP) for a competitive selection process or prior to selection of a project in a non-competitive selection process, HACCC shall submit to the HUD Field Office the following:

4. The total number of units authorized under the ACC including HUD-VASH and Family Unification Program (FUP) vouchers and how many units are excluded from the total PBV commitment to date, if applicable;
5. Total number of units currently committed for PBV under HAP, AHAP or selected and specify the number of units excluded from the baseline PBV units;
6. The number of units to which HACCC is proposing to attached PBV assistance through the RFP or selection;

The notice must be submitted to HUD no later than 14 days prior to the issuance of an RFP or selection is made to pbvsubmissions@hud.gov and copied to the field office PIH director.

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

HACCC Request For Proposals For Rehabilitated And Newly Constructed Units

HACCC Policy

HACCC will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspaper of County-wide general circulation:

- Contra Costa Times

In addition, HACCC will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

HACCC will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units HACCC estimates that will be able to assist under the funding HACCC is

HACCC may periodically advertise that it is accepting proposals, in the following County-wide, general circulation newspaper:

- Contra Costa Times

In addition to, or in place of advertising, HACCC may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

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

- Extent to which the project furthers HACCC's goal of de-concentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

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

HACCC-owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that HACCC-owned units were appropriately selected based on the selection procedures specified in HACCC's administrative plan. This also applies to non-competitive selections. If HACCC selects a proposal for housing that is owned or controlled by HACCC, HACCC must identify the entity that will review HACCC's proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the initial rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

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

HACCC Policy

HACCC may submit a proposal for project-based housing that is owned or controlled by HACCC. If the proposal for HACCC-owned housing is selected, HACCC will use a standard or high performer housing authority in or adjacent to Contra Costa County to review HACCC's selection and to administer the PBV program. HACCC will obtain HUD approval of the preferred standard or high performer housing authority in or adjacent to Contra Costa County prior to selecting the proposal for HACCC-owned housing.

17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 2/28/206/25/14]

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

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

~~HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.~~

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~~When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 2/28/20 contains a list of all required documentation.~~

~~Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.~~

~~If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.~~

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

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~~HACCC must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, HACCC may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD or a HUD-approved housing credit agency (HCA) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.~~

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The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the

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HACCC Policy:

Excepted units will be limited to units for elderly families or units with eligible supportive services.

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~~The PHA will not provide assistance for excepted units. Beyond that, the PHA will not impose any further cap on the number of PBV units assisted per project.~~

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Housing Opportunities Through Modernization Act of 2016 (HOTMA) Changes

The Housing Opportunities Through Modernization Act of 2016 (HOTMA) made changes to the income-mixing project cap and modified the exception categories to the cap on the number of assisted units in a project. The new caps apply only to projects with HAP effective dates after the HOTMA final implementation rule effective date of April 18, 2017.

Under HOTMA, the new limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. Owners under HAP contracts predating April 18, 2017 are still subject to the terms of those HAP Contracts and must continue to designate the same number of units and assist the same number of excepted families as provided in such HAP contracts for the duration of the HAP contract and subsequent renewals unless the owner and HACCC mutually agree to change the requirements.

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

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

HACCC Policy

HACCC will not impose any cap beyond HUD regulations on the number of PBV units assisted per project.

17-II.G. SITE SELECTION STANDARDS

Compliance With PBV Goals, Civil Rights Requirements, And HQS Site Standards [24 CFR 983.57(B)]

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

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

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

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HACCC must inspect each contract unit before execution of the HAP contract. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

HACCC Policy

HACCC will not provide assistance on behalf of the family until the unit fully complies with HQS. HACCC may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

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

Before providing assistance to a new family in a contract unit, HACCC must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS. HACCC may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions or if the unit passed an alternative inspection.

HACCC-PHA Policy

The PHA-HACCC will not provide assistance in turnover units until the unit fully complies with HQS.

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

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

If more than 20 percent of the biennial sample of inspected contract units in a project fails the initial inspection, HACCC must re-inspect 100 percent of the contract units in the project.

Other Inspections [24 CFR 983.103(E)]

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

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

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

St. Paul's Community Center and Apartments	1860 Trinity Ave., Walnut Creek, CA 94596	16	7	0	0	0	0	23	Family Housing
Terrace Glen Apartments (Antioch Scattered Site Renovation)	107 W. 20th St., Antioch, CA 94509	0	1	12	3	0	0	16	Family Housing
Pinecrest Apartments (Antioch Scattered Site Renovation)	1945 Cavallo Rd., Antioch, CA 94509	0	3	9	0	0	0	12	Family Housing
Hookston Senior Community Pt. 2	80 West Hookston Rd., Pleasant Hill, CA 94523	0	18	2	0	0	0	20	62 Yrs or Older
Heritage Point Apartments	1500 Fred Jackson Way, Richmond, CA 94801		12	16	13			41	Family Housing
Casa Del Rio	615 W. 7th Street, Antioch, CA 94509		72	8				80	62 Yrs or Older
Trinity Plaza Apartments	350 MacDonald Ave., Richmond, CA 94801		65					65	62 Yrs or Older
Carquinez Apartments	400 Harbour Way, Richmond, CA 94801		35					35	62 Yrs or Older
Lillie Mae Jones	120 MacDonald Ave., Richmond, CA 94801		9	7	31	1		20	Disabled, Family Housing
Richmond City Center Apts	1000 Macdonald Ave, Richmond, CA 94801		5	5	6			16	Family Housing
Richmond Village (Former Public Housing Easter Hill)	700 So. 26th St, Richmond, CA 94804							68	Family Housing
Miraflores	150 So. 45th Street, Richmond, CA 94804		79					79	Miraflores
Monterey Pines	680 So. 37th Street, Richond, CA 94804			25	25			50	Monterey Pines
Terraces - Senior (Nevin 21, 23)	21 and 2300 Nevin Ave., Richmond, CA 94801	52	47	13	-10	-5		46±127	62 Yrs or Older Senior and Family Housing
Terraces - Family	2300 Nevin Ave., Richmond, CA 94801			10	20	5		35	Family
Friendship Manor	564 Stege Ave., Richmond, CA 94804		54	2				56	62 Yrs or Older
Triangle Court	980 Triangle Court, Richmond, CA 94804		26	56	15			97	Family Housing

17-VI.D. SELECTION FROM THE WAITING LIST

[24 CFR 983.251(C)]

Applicants who will occupy units with PBV assistance must be selected from HACCC's site-based waiting list for that property. HACCC shall establish selection criteria or preferences for occupancy of particular PBV units. HACCC may place families referred by the PBV owner to their PBV site-based waiting list.

Formerly homeless families who have graduated from a Contra Costa County Continuum of Care (COC) funded permanent supportive housing program, or another homeless housing program participating in the COC Coordinated Entry system, that partners with HACCC such as Shelter Plus Care. A referral from the COC Coordinated Entry system is required to be eligible for this preference (500 Points);

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Any family that has been terminated from HACCC's HCV program due to insufficient program funding (20 Points);

All applicants will be assigned points based on any preference(s) for which they qualify (e.g., a veteran and resident of HACCC's jurisdiction would receive 11 points). Applicants with more preference points will be ranked ahead of applicants with fewer preference points. Among applicants with the same number of preference points, families will be selected according to the date and time of application to that site-based wait list. A family who applied ahead of another family with the same preference points will have preference over that family.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal Of Offer [24 CFR 983.251(E)(3)]

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

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

The HACCC shall remove an applicant from the site-based wait list of a project when the applicant refuses an offer of housing at the specific site. At the Executive Director's discretion, exceptions may be made for situations where the family is forced to refuse an offer of PBV housing due to a family, medical or legal obstacle.

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If an applicant is removed from a PBV waiting list for failing to reply to a wait list update or other correspondence or mail is returned as undeliverable, the applicant shall have up to one year from the date of removal from the waiting list to contact HACCC to request the reinstatement of their application. HACCC shall reinstate the applicant without penalty. After one year, the applicant must re-apply to the wait list when it is opened.

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

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

Acceptance of Offer [24 CFR 983.252]

Family Briefing

EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units

[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family's unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

RAD Requirements Applicable to Non-RAD units in the Project

<u>Alternative Requirement under RAD as Listed in Notice PIH 2019-23</u>	<u>Standard PBV Policy That Does Not Apply</u>	<u>Applicable Policy in Chapter 18</u>

<u>1.6.A.4. Site Selection – Compliance with PBV Goals</u>	<u>17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements.</u>	<u>18-II.F. SITE SELECTION STANDARDS</u>
<u>1.6.B.5.d. PBV Site-Specific Utility Allowances</u>	<u>Alternative requirement under RAD. No corresponding policy in Chapter 17.</u>	<u>18-VII.C. UTILITY ALLOWANCES</u>
<u>1.6.C.1. No Rescreening of Tenants upon Conversion</u>	<u>Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.</u>	<u>18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION</u>
<u>1.6.C.2. Right to Return</u>	<u>Alternative requirement under RAD. No corresponding policy in Chapter 17.</u>	<u>18-I.D. RELOCATION REQUIREMENTS</u>
<u>1.6.C.3. Phase-in of Tenant Rent Increases</u>	<u>Alternative requirements under RAD. No corresponding policy in Chapter 17.</u>	<u>18-VIII.D. PHASE-IN OF TENANT RENT INCREASES</u>
<u>1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs</u>	<u>Not covered in administrative plan.</u>	<u>18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS</u>
<u>1.6.C.5. Resident Participation and Funding</u>	<u>Alternative requirement under RAD. No corresponding policy in Chapter 17.</u>	<u>18-VI.D. RESIDENT PARTICIPATION AND FUNDING</u>
<u>1.6.C.6. Resident Procedural Rights</u>	<u>Policies related to hearings in Chapter 16</u>	<u>18-VI.H. RESIDENTS' PROCEDURAL RIGHTS</u>

	<u>apply, with added procedural rights and notice requirements as outlined in Chapter 18.</u>	
<u>1.6.C.7. Earned Income Disregard (EID)</u>	<u>Alternative requirements under RAD for in-place residents.</u> <u>New admissions follow policies in Chapter 6.</u>	<u>18-VI.G. EARNED INCOME DISALLOWANCE</u>
<u>1.6.C.8. Jobs Plus</u>	<u>Not covered in administrative plan.</u>	<u>No corresponding policy.</u>
<u>1.6.C.9. When Total Tenant Payment Exceeds Gross Rent</u>	<u>Alternative requirements under RAD for in-place residents.</u> <u>New admissions follow policies in 17-VII.B. LEASE. Continuation of Housing Assistance Payments.</u>	<u>18-VI.B. LEASE. Continuation of Housing Assistance Payments</u>
<u>1.6.C.10. Under-Occupied Unit</u>	<u>Alternative requirements under RAD for in-place residents.</u> <u>New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units</u>	<u>18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units</u>
<u>1.6.D.4. Establishment of Waiting List</u>	<u>Alternative requirements under RAD for initial establishment of the waiting list.</u> <u>Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST</u>	<u>18-V.D. ORGANIZATION OF THE WAITING LIST</u>
<u>1.6.D.10. Initial Certifications</u>	<u>Alternative requirements under RAD for in-place</u>	<u>18-VIII.C. TENANT RENT TO</u>

<u>and Tenant Rent Calculations</u>	<u>residents. No corresponding policy in Chapter 17.</u>	<u>OWNER, Initial Certifications</u>
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Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMD). Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

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18-1.B. APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice ~~2019-23 PIH 2012-32, REV 2~~ (issued ~~June 15, 2015~~ ~~September 5, 2019~~) and Notice ~~PIH 2012-32, REV 3~~ (issued ~~January 12, 2017~~). Any non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 and in this policy.

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), and Division L, Title II, Section 237 of the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved enacted December 18, 2015). the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the "RAD Statute." Requirements specific to the RAD program may be found in the following:

Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing.

- Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.
 - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of converting assistance through RAD, including those where a CHAP had already been issued when it, upon the expiration of the 30-day comment period after publication of the notice. Notice PIH 2012-32, REV-3 was published January 12, 2017.
 - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.

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~~- Notice PIH 2012-32, REV-2, RAD— Final Implementation, REV-2 i~~was applicable to projects ~~that were seeking conversion of~~ing assistance through RAD, including those where a CHAP had already been issued upon the expiration of the 30-day comment period after publication of the Notice. ~~PIH Notice 2012-32, REV-2 when it was published June 15, 2015.~~

- ~~▪ Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.~~

~~**NOTE: The policies in this chapter follow Notice PIH 2012-32, REV-3. If your project falls under REV-2, applicable policies may be found in the applicable sections of the Instruction Guide for Chapter 18.**~~

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RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)

RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)

Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.

- o This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.

Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.

- o This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.

NOTE: The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D.

RAD FAQs (<http://www.radresource.net/search.cfm>)

PIA Policy

Project	Closing Date	RAD Notice
Tabora Gardens	09/12/2016	2012-32, rev 2
Garden Park Apartments	11/13/2017	2012-32, rev 2
Robin Lane Apartments	11/28/2017	2012-32, rev 2
Elaine Null Apartments	11/1/2017	2012-32, rev 2
Church Lane Apartments	12/20/2017	2012-32, rev 2
Hana Gardens Senior Apartments	01/01/2017	2012-32, rev 2
Hookston Senior Homes	11/01/2018	2012-32, rev 2
Heritage Point Apartments	12/21/2017	2012-32, rev 2
Antioch Scattered Site Renovations	11/01/2018	2012-32, rev 2
St. Paul's Commons	03/27/18	2012-32, rev 2
Idaho Apartments	12/01/2017	2012-32, rev 2
Friendship Manor	12/22/2015	2012-32, rev 1
Triangle Court	12/22/2015	2012-32, rev 1

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18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE
[24 CFR 983.2]

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

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HACCC Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HACCC policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

18-I.D. RELOCATION REQUIREMENTS [Notice PIH 2016-17]

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17];

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In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any non-RAD PBV units located in the same project are also subject to the right to return.

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Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.

In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit

If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.

Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:

- Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
- The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
- Income limit eligibility requirements associated with the LIHTC program or another program; and
- Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.

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Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

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In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.

Alternative housing options may involve a variety of housing options, including but not limited to:

- Transfers to public housing
- Admission to other affordable housing properties subject to the applicable program rules
- Housing choice voucher (HCV) assistance
- Homeownership programs subject to the applicable program rules
- Other options identified by the PHA

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However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2-5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

18-IE. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; Notice PIH-2016-172012-32, REV-3]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION

18-II.A. OVERVIEW

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH ~~2019-232012-32, REV-3~~. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL [Notice PIH ~~2019-232012-32, REV-3~~]

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a "single-purpose entity" that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA's related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].
- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or non-profit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the PHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or non-profit entity, or preservation of an interest by a PHA or non-profit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or non-profit entity (or entities), directly or through a wholly-owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.
- Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

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For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units; (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.

- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:

- The PHA, or an affiliate under its sole control, is the general partner or managing member;
- The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
- The PHA retains control over leasing the property and determining program eligibility;
- The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;
- Other means that HUD finds acceptable.

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:

- A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
- A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

If low income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:

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- ~~The PHA, or an affiliate under its sole control, is the general partner or managing member;~~
- ~~The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;~~
- ~~The PHA retains control over leasing the property and determining program eligibility;~~
- ~~The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;~~
- ~~Other means that HUD finds acceptable~~

18-II.C. PHA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of ownership or control ~~control/ownership~~ provided under Notice PIH 2019-23 2012-32, REV-3 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of PHA-owned under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of ownership or control, but may not be considered PHA-owned for purposes of requiring an independent entity.

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

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

HACCC Policy

If units converted to PBV under RAD are PHA-owned housing, HACCC will use a standard or high performer housing authority in or adjacent to Contra Costa County as the HUD-approved independent entity.

18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23, REV-3; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]

For projects governed by Notice PIH 2019-23, the following language applies:

In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing, or have less than 50 units remaining and have initiated procedures to dispose of their final that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects through the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC if it, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

- Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA close-out reserve). Any funds not needed for public housing close-out costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or
- Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

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In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

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- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have such funding has been identified in the RCC approved financing plan and converted at closing for Section 8 RAD purposes included in the approved "sources and uses" attached to the RCC.

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For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

- Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or

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- Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

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• In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

• In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

• In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing: the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

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18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH- 2019-232012-32, REV-3]

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PBV Percentage Limitation

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

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Unit Cap Limitation

When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have ~~There is~~ no cap on the number of units that may receive PBV assistance in a project.

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However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 only, the following language applies:

- In general, the PHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as "excepted units" and do not count toward the project cap.
- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

PHA Policy

For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

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18-II.F. SITE SELECTION STANDARDS [Notice PIH ~~2019-23~~2012-32, REV-3; Notice PIH 2016-17]

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

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To facilitate the uniform treatment of residents and units, any non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

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The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW [Notice PIH ~~2012-32, REV-3~~2019-23; *Environmental Review Requirements for RAD Conversions, March 2019*]

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's as part of the financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH ~~2019-23~~. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.~~2012-32, REV-3.~~

PART III: DWELLING UNITS

18-III.A. OVERVIEW

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

18-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

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

Lead-based Paint [24 CFR 983.101(c); [Notice PIH 2019-23](#)]

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

18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

[\[Notice PIH 2016-17\]](#)

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

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

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18-III.D. INSPECTING UNITS

Initial Inspection [RAD Quick Reference Guide; Notice PIH 2012-32, REV-32019-23]

Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with HQS. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet HQS by the date indicated in the RAD Conversion Commitment (RCC).

~~Under RAD, all units must meet HQS no later than the date of completion of the work as indicated in the RCC.~~

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

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS. ~~unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions or if the unit passed an alternative inspection.~~

HACCC Policy

~~HACCC will not provide assistance in turnover units until the unit fully complies with HQS.~~

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

At least once every 24 months during the term of the HAP contract, 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 are not counted toward meeting this inspection requirement.

HACCC Policy

HACCC will inspect, on a biennial basis, all RAD PBV-assisted units to determine if the contract units and the premises are maintained in accordance with HQS.

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.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

HACCC Policy

HACCC will not rely on alternative inspection standards.

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Inspecting PHA-Owned Units [24 CFR 983.103(f); Notice PIH 2017-21]

In the case of PHA-owned units, all required inspections ~~the inspections~~ must be performed by an independent agency-entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

18-IV.A. OVERVIEW *[PBV Quick Reference Guide (10/14)]*

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Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

18-IV.B. HAP CONTRACT REQUIREMENTS

Contract Information [PBV Quick Reference Guide (10/14); Notice PIH 2019-23]

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. ~~The RAD rider must be attached to the PBV HAP contract and effectuates the conversion of public housing to PBV under RAD PBV.~~ The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

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Execution and Effective date of the HAP Contract [RADBlast! 7/11/16]

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

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Term of HAP Contract [Notice PIH 2019-23 2012-32, REV-3]

The initial term of the HAP contract may not be for less than 15 years, and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act

of 1937, ~~which permits a minimum term of one year~~which established a maximum term of ~~15 years~~, as well as 24 CFR 983.205(a), which governs the contract term.

Agreement to Enter into a HAP (AHAP) Contract [Notice PIH ~~2019-232012-32, REV-3~~]

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

Mandatory Contract Renewal [Notice PIH [2019-232042-32, REV-3](#)]

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract ~~for term of up to 15 years~~, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

Remedies for HQS Violations [24 CFR 983.208(b)]

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

HACCC Policy

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

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

Floating Units [Notice PIH ~~2012-32, REV-32019-23~~]

~~Upon request of the owner to the voucher agency that will administer the project, in certain mixed-finance projects, the PHA may ask HUD permission to have~~ will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units, ~~including any excepted units~~. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

HACCC Policy

HACCC will not float assistance among unoccupied units within the project.

Reduction in HAP Contract Units [Notice PIH ~~2012-32, REV-32019-23~~]

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" ~~units have been permitted~~.

18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 983.302(e)]

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

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS

18-V.A. OVERVIEW

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

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH ~~2012-32~~, REV-32019-23]

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH ~~2012-32~~, REV-32019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers re-verified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2012-32, REV-32019-23]

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any non-RAD PBV units located in the same project are also subject to these requirements.

HACCC Policy.

HACCC will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. The PHA currently has waiting lists for the following RAD PBV projects:

Tabora Gardens	3701 Tabora Dr., Antioch, CA 94509	Veterans, Family, Disabled
Garden Park Apartments	2387 Lisa Lane Pleasant Hill, CA 94523	Disabled, Family Housing
Robin Lane Apartments	1149 Meadow Lane Concord, CA 94520	Family Housing
Elaine Null Apartments	112 Alves Lane/300 Waters Street Pittsburg, CA 94565	Family Housing
Church Lane Apartments	2555 Church Lane, San Pablo, CA 94806	Family Housing
Hana Gardens Senior Apartments	10860 San Pablo Ave., El Cerrito, CA 94530	62 Yrs or older
Hookston Senior Homes	80 W. Hookston Street, Pleasant Hill, CA 94523	62 Yrs or older
Heritage Point Apartments	1540 Fred Jackson Way, Richmond, CA 94801	Family Housing
Antioch Scattered Site Renovations	1945 Cavallo Rd., Antioch, CA 94509 107 W. 20th Street, Antioch, CA 94509	Family Housing
St. Paul's Commons	1860 Trinity Ave, Walnut Creek, CA 94596	Family Housing
Idaho Apartments	10203 San Pablo Avenue, El Cerrito, CA 94530	Homeless Housing
Friendship Manor	564 Stege Ave., Richmond, CA 94804	62 Yrs or older
Triangle Court	980 Triangle Court, Richmond, CA 94804	Family Housing

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For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the PHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

The PHA will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). The PHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

The PHA will assess any changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based on confirmed and accurate PIC occupancy data. At least every three years, the PHA will use independent testers to assure that the site-based system is not being implemented in a discriminatory manner.

The PHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

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18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(e)]

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2012-32, REV-32019-23]

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

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

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

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

Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2012-32, REV-32019-23]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

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

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

HACCC Policy

HACCC will offer the same preferences for the RAD PBV program that it does for the regular PBV program as outlined in Chapter 17 of this Administrative Plan.

PART VI: OCCUPANCY

18-VI.A. OVERVIEW

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

18-VI.B. LEASE [24 CFR 983.256; ~~Notice PIH 2012-32, REV-3~~]

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

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

Lease Requirements [24 CFR 983.256(c); ~~Notice PIH 2012-32, REV-3~~ 2019-23]

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

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

The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD. ~~An example of language that may be included can be found in Attachment 1E of Notice PIH 2012-32, REV-2.~~

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide)

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

Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2012-32, REV-32019-23]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner's lease as well as the PHA's administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

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These provisions apply to non-RAD PBV units located in the project as well.

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both the PHA and the project owner. See Chapter 16 Part III: Informal Reviews and Hearings for more information.

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

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2012-32, REV-32019-23]

Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, until such time as the family's TTP falls below the gross rent, the family will pay the owner the lesser of their TTP minus the utility allowance or any applicable maximum rent under the LIHTC program. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Any non-RAD PBV units located in the same project are also subject to these requirements.

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. The PHA may request a waiver from HUD in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days.

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180 day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207.

HACCC Policy

The PHA will not request a waiver from HUD to allow new families whose TTP initially exceeds gross rent to occupy units.

If a participating family who was admitted after the RAD conversion receives zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

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18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2012-32, REV-32019-23]

Current PH FSS participants will continue to ~~participate in the PHA's be eligible for FSS program once their housing is converted under RAD~~, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA), to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding ~~and may use that funding to serve PH, HCV, and PBRA participants in its FSS program.~~

Current Resident Opportunities and Self-Sufficiency-Service Coordinators (ROSS-SC) program grantees will be able to finish out their current ROSS-SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS-SC grants.

At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a non-profit or local resident association and this consequence of a RAD conversion may impact those entities.

~~Any non-RAD PBV units located in the same project are also subject to these requirements.~~

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18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2012-32, REV-32019-23]

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Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding. Resident rights under RAD conversions apply to all PBV assisted units in a project, RAD or PBV.

18-VI.E. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2012-32, REV-32019-23]

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any non-RAD PBV units located in the same project are also subject to these requirements.

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Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA'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 PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

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PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project
- PBV assistance in another project
- Tenant-based voucher assistance

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

Emergency Transfers under VAWA [Notice PIH 2017-08]

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

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

HACCC Policy

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

HACCC will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where HACCC has PBV units. HACCC will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the PHA will give priority to the participant on the other development's waiting list.

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

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

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to HACCC's public housing program.

18-VII. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2012-32, REV-32019-23]

~~Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both the PHA and the project owner.~~

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)-(vi) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

For any hearing required under 24 CFR 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.

For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

The ~~PHA (as owner)~~ must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)-(vi). (See Chapter 16)

The ~~PHA (as owner)~~ must provide an opportunity for an informal hearing before an eviction.

PART VII: DETERMINING CONTRACT RENT

18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2012-32, REV 32019-23]

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2019-232-32, REV 2. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD.

~~This use, which HUD refers to as "bundled" rents, is permissible when a PHA submits applications for two or more projects. There is no limit to the number of projects that a PHA may bundle.~~

Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications made to the initial contract rent~~the current funding level~~, the initial rents are set at the lower of:

- ~~— An amount determined by the PHA, not to exceed 110 percent of the fair market rent (FMR) or the PHA's exception payment standard approved by HUD, or the alternate rent cap in a PHA's MTW agreement minus any utility allowance~~
- ~~The rReasonable rent~~
- ~~— The rent requested by the owner in comparison to the unassisted housing market~~
- ~~An amount determined by current funding~~
- ~~— Adjusted through rent bundling or reconfiguration of units~~

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18-VII.C. UTILITY ALLOWANCES [Notice PIH 2012-32, REV 32019-23; PBV Quick Reference Guide (10/14); Notice PIH 2018-11]

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When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract. ~~A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule.~~

After conversion, the PHA may maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively. The PHA may instead, however, apply site specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to non-RAD PBV units in the project and is calculated consistent with Notice H 2015 04.

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HACCC Policy

HACCC will use the HCV utility allowance schedule for the RAD PBV developments unless an alternative utility allowance, such as the California Utility Allowance Calculator, has been adopted to accommodate HOME or other forms of assistance.

18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353]

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

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

Initial Certifications [Notice PIH 2019-23]

For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any non-RAD PBV units located in the same project are subject to the same requirements.

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Tenant and PHA Responsibilities

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

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

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Utility Reimbursements

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

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

HACCC Policy

HACCC will make utility reimbursements directly to the family.

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2012-32, REV-32019-23]

For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of *total tenant payment (TTP)*) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents.

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HACCC Policy

HACCC will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate the family's tenant rent in PBV. HACCC will implement a three-year phase-in for in-place families whose TTPrent increases by more than the greater of 10 percent or \$25 purely as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)

Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP.

Year 3: Year 3 AR and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

HACCC will communicate the PHA's phase-in policy in writing to the family at the time HACCC's first determines that the family qualifies for a rent phase-in. Any non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. OTHER FEES AND CHARGES [24 CFR 983.354]

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Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.