

**LOUDOUN COUNTY
DEPARTMENT OF FAMILY
SERVICES
(DFS)**

**ADMINISTRATIVE PLAN
FOR
PROJECT BASED VOUCHERS
(PBV)**

Loudoun County Department of Family Services

**Approved by the Loudoun County Board of Supervisors on October 2, 2013
Revised May 3, 2016**

Introduction

This Administrative Plan describes Loudoun County Department of Family Services policy guidance for the Project-Based Voucher (PBV) program in ten sections:

Section 1: Definitions.

Section 2: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Section 3: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors DFS will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance for projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Section 4: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Section 5: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Section 6: Housing Assistance Payments (HAP) Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at DFS's discretion.

Section 7: Selection of PBV Program Participants. This part describes the requirements and policies governing how DFS and the owner will select a family to receive PBV assistance.

Section 8: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Section 9: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Section 10: Payments to Owner. This part describes the types of payments owners may receive under this program.

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Section 1: Definitions

These definitions and clarifications are provided for the reader's convenience. They do not supersede the definitions found in HUD's program regulations for the same terms.

Absorption. In portability, the point at which a receiving PHA stops billing the initiating PHA for assistance on behalf of a family living in the receiving PHA's jurisdiction.

ACC Annual Contributions Contract. A written contract between HUD and the PHA through which HUD agrees to provide funding to operate the Housing Choice Voucher Project Based Rental Assistance (Housing Choice Voucher) program and the PHA agrees to operate according to HUD requirements.

ACC Reserve Account. An account established by HUD and funded from the amounts by which the annual maximum payment to the PHA under the consolidated ACC exceeds the amount actually approved and paid. This account is used as a source for additional payments for the Housing Choice Voucher program.

Adjusted Income. Annual income minus the dollar amount of the allowances for which a participating family qualifies. Adjusted income is calculated to determine the amount a family can afford to contribute for their housing costs. Regulations governing the calculation of adjusted income are found in 24 CFR Part 5.

Administrative Fee. Fee paid by HUD to the PHA for administering the Housing Choice Voucher program.

Administrative Fee Reserve. Account established by the PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes.

Administrative Plan. The Administrative Plan describes PHA policies for administering the Housing Choice Voucher program. The Administrative Plan is part of the PHA Plan.

Admission. The effective date of the first Housing Assistance Payment (HAP) contract providing housing assistance payments for a family to an owner. This is the point at which a family becomes a participating family in the Housing Choice Voucher program.

Annual Income. Gross income projected to be received by all family members during the twelve months following an initial certification or recertification. Income used by a PHA to determine a family's initial eligibility for the Housing Choice Voucher program. HUD regulations instruct a PHA to include some income sources and to exclude other income sources when projecting a family's annual income. Regulations governing the calculation of annual income are found in 24 CFR 982.516.

Applicant. A family that has applied for admission to the program, but is not yet a participant. A family becomes a participant on the effective date of the first HAP contract executed for the family (first day of initial lease term).

Bedroom. A room large enough for a bed with a locking door to the hallway with a closet and pole to hang clothes. Room must conform to Virginia Maintenance Code and 1993 revised Loudoun County zoning ordinance for a bedroom. **amended 7/2009*

Brief Period. Thirty days or less.

Budget Authority. For each funding increment in the Housing Choice Voucher program, the maximum amount HUD may pay the PHA for program expenses.

Child. A family member, other than the head, co-head or spouse, under 18 years old.

Citizen. A citizen or national of the United States.

Companion. See “Live-In Aide”

Consolidated Annual Contributions Contract (ACC). Includes the funding for all program increments in effect. Although separate ACCs must be created for each funding increment, the consolidated ACC states HUD’s commitment to fund each increment identified in the ACC exhibits constitutes a separate ACC.

Contiguous MSA. In portability, a Metropolitan Statistical Area (MSA) that shares a common boundary with the jurisdiction of DFS.

Continuously Assisted. A family is continuously assisted if the family is already receiving assistance under any program established under the United States Housing Act of 1937, as amended, when the family is admitted to the Housing Choice Voucher program.

Contract. Agreement between the owner and the PHA through which the PHA agrees to provide housing assistance payments to the owner on behalf of the tenant, and the owner agrees to abide by HUD and PHA requirements. Generally referred to as the Housing Assistance Payment (HAP) contract. For all new agreements, the PHA will execute a Housing Choice Voucher Program contract.

Contract Authority. The maximum annual payment by HUD to a PHA for a funding increment.

Conviction. Found guilty by a court of law.

Disabled Person. See definition for Person with Disabilities.

Displaced Person. A family in which its sole member, or each member has been displaced by government action. A person or family whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Domicile. The legal residence of the head of the household, co-head or spouse as determined in accordance with state and/or local law.

Drug Related Criminal Activity. The illegal manufacture, sale or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance (as defined in Section 102 of the Controlled Substance Act, 21 United States Code (U.S.C.) 802); or the illegal use, or possession for personal use, of a controlled substance.

Drug Trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Earned Income Disallowance (EID). Also referred to as Earned Income Disregard is an incentive that allows a disabled tenant who was previously unemployed or under-employed, to work without an immediate increase in rent.

Elderly Family. A family whose head, co-head, spouse or sole member is a person who is at least 62 years old; two or more persons who are at least 62 years old living together; or one or more persons who are at least 62 years of age living with one or more live-in aids.

Elderly Person. A person who is at least 62 years of age.

Eviction. A termination of a tenancy by a court of law, as evidenced by a Judgment for Possession.

Evidence of Citizenship or Eligible Immigration Status. The documents required of family members claiming U.S. citizenship or eligible immigration status.

Exception Payment Standard. In the voucher program, an initial payment standard in excess of the PHA established payment standard. If the PHA had a HUD approved area exception rent in effect on October 1, 1999, the PHA may establish an exception payment standard amount up to the amount of the HUD approved area exception rent.

Extension of Time. *(for Housing Quality Standards (HQS) inspection repairs)* With approval of DFS, this allows additional time, usually not more than 30 days, to complete the required repairs, during which time the HAP payment may continue to be paid in full; be withheld and retroactively repaid in full; or be withheld and reduced appropriately when payments resume or HAP contract is terminated.

Extremely Low Income Family. A family receiving income at or below 30% of the Area Median Income (AMI).

Fair Market Rent (FMR). The rent, including the cost of utilities, that would be required to be paid in the PHA jurisdiction to lease privately owned, existing, decent, safe and sanitary housing of modest (non-luxury) nature with suitable amenities. HUD establishes FMRs for housing units of varying sizes that are published in the Federal Register.

Family. Two or more persons sharing residency whose income and resources are available to meet the family's needs and are either related by blood, marriage, or act of law; or a family which evidences a stable family relationship such as an unmarried couple sharing residency, one or both of whom are the parents of any child or children living with them and whose income and resources are held in common and are available to meet the needs of the family. This relationship would have been established prior to applying for or receiving the Housing Choice Voucher Rental Housing Payments Program, and one that has not been created for the sole purpose of receiving such assistance; or any two or more individuals, one or both of whom are handicapped or disabled and whose incomes and resources are available to meet the needs of the family will be considered evidencing a stable family relationship. Any two or more able bodied individuals who are not related by blood, marriage or act of law, and who do not come under the definition of family composition as listed above, will not be considered to be eligible and will not be included in this program.

Family Self-Sufficiency (FSS) Program. A program established by a PHA to promote self-sufficiency for assisted families. The program often includes the provision for coordination of supportive services to encourage education, job training, mental health counseling, drug counseling, etc., as necessary for program participants.

Family Unit Size. The appropriate number of bedrooms for a family. The family unit size is based on the PHA established subsidy standards.

Housing Assistance Payment (HAP) Contract. The contract between DFS or administering agency and the owner that allows housing assistance payments to be made directly to the owner on a program participants' behalf.

HAP Payment. The subsidy paid to the owner, by DFS or an administering agency on behalf of a program participant.

HAP-Abated Payment. Stops the HAP payment to an owner for a period during which the condition of a unit does not conform to Housing Quality Standards (HQS). An abated payment is not repaid after the HQS violation is corrected.

HAP-Suspended Payment. The HAP payment is not being made e.g., either terminated or withheld regardless of the reason.

HAP-Terminated Payment. Permanent termination of housing assistance payments to the owner for a specific Housing Choice Voucher/Housing Choice Voucher participant. Permanently for which DFS provides the owner with written notice.

Homeless. A person or family living in places not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings, on the street; in an emergency shelter; in transitional or supportive housing for homeless persons who originally came from the streets or emergency shelters; in any of the above places, but spending a short time (up to 30 consecutive days) in a hospital or other institution.

Housing Opportunities for Person with Aids (HOPWA). Program specifically for person with Aids or are HIV positive.

Housing Staff (HS). Employees of Loudoun County Department of Family Services.

Housing Quality Standards (HQS). Includes both HUD's HQS and DFS' supplemental inspection requirements. Properties must meet HQS at all times. Once a property is under a HAP contract, a primary contractual obligation of the owner and the administering agency is to ensure that the property continues to meet all HQS requirements.

Household. See "Family".

HUD. The United States Department of Housing and Urban Development.

HUD Requirements. HUD requirements for administering the Housing Choice Voucher programs. HUD issues new requirements as regulations, rules and notices in the Federal Register, and other binding program directives.

Informal Hearing. The method of appealing the decision of DFS staff to change the amount of rent a participant is paying to terminate a participant's assistance. This does not apply to expired vouchers.

Informal Review. The method of appealing the decision of DFS staff to rescind or not issue a voucher to an applicant. This does not apply to expired vouchers.

Initial Housing Authority. In portability, the term refers to (1) a PHA that originally selected a family that subsequently moved out of its jurisdiction; and (2) a PHA that absorbed a family that subsequently decides to move out of its jurisdiction.

Initial Rent to Owner. The monthly rental amount to owner at the beginning of the initial lease term.

INS. Immigration and Naturalization Service.

Jurisdiction. The area in which the PHA has authority under Federal, state and local law to administer the Housing Choice Voucher program.

Lease. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions of occupancy of the dwelling unit by the family. The lease establishes the rights and responsibilities for both the owner and the tenant.

Live-In Aide. A person or companion who resides with one or more elderly, near-elderly or disabled persons and who: 1) Is determined to be essential to the care and well-being of the person(s); 2) Is not obligated for the support of the person(s); 3) Would not be living in the unit except to provide the necessary supportive services; and 4) Would not be entitled to a Housing Choice Voucher in the event of death of Housing Choice Voucher client.

Local Preference. A preference established by the PHA used to select among applicant families on the waiting list.

Low Income Family. A family receiving an annual income at or below 80% of the Area Median Income. A low income family may receive Housing Choice Voucher assistance under special conditions.

Maximum Initial Rent Burden. The total family contribution for a Housing Choice Voucher must be less than 40% of the adjusted income when the family first moves into any unit or signs the first assisted lease for the unit.

Minimum Rent. Established by the PHA somewhere between \$0 and \$50.00.

Mixed Family. A family whose members include citizens and/or persons with eligible immigration status, as well as persons without eligible immigration status.

MSA. Metropolitan Statistical Area

Near-Elderly. Family whose head, co-head, spouse or sole member is a person who is at least 50 years old, but not yet 62 years old. Two or more persons who are at least 50 years of age, but not yet 62 years old, living together. One or more persons who are at least 50 years old, but not yet 62 years old, living with one or more live-in aides.

Non-Citizen. A person who is neither a citizen nor national of the United States.

Occupant. Any person staying in an HCV residence for 30 or more days or nights per year.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

Participant. A family that has been admitted to the Housing Choice Voucher program, and is currently assisted in the program. A family becomes a participant on the effective date of the first HAP contract executed by the administering agency for the family (first day of initial lease term).

Payment Standard. An amount established by the PHA and used to calculate the housing assistance payment for a family participating in the voucher program. The PHA establishes the payment standard anywhere between 90% and 110% (may go to 120% with HUD approval) of the HUD established FMRs for the jurisdiction. The payment standard is the maximum monthly subsidy payment for a unit size.

Person with Disabilities. A person with a disability may have a physical, sensory, mental or developmental disability as defined in federal legislation. A person with a disability is one who meets at least one of the following three definitions: 1) Has a disability as defined in Section 223 of the Social Security Act. This Act defines disability as an inability to engage in any substantial gainful activity because of any physical or mental impairment that is expected to result in death or has lasted or can be expected to last continuously for at least 12 months; or, for a blind person at least 55 years old, inability because of blindness to engage in any substantial gainful activities comparable to those in which the person was previously engaged with some regularity and over a substantial period; or 2) Has a physical, sensory, mental or emotional handicap which is expected to be of long and indefinite duration; substantially impedes his/her ability to live independently; or has a history of such an impairment or is perceived by others of having such an impairment and is of such a nature that the person's ability to live independently could be improved by more suitable housing; or 3) Has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act. Developmental disability is defined as a severe, chronic disability which is attributable to a mental and/or physical impairment; was manifested before the age of 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas: capacity for independent living, self-care, receptive and expressive language, learning, mobility, self-direction, and economic self-sufficiency; and requires special interdisciplinary or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

PHA. Public Housing Authority or public housing agency. A state, county or municipal agency authorized to engage in or assist in the development or operation of low-income housing. The Loudoun County Department of Family Services is considered a PHA.

Preponderance of Evidence. Evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

Programs Established Under the United States Housing Act of 1937. 1. The Public Housing program or Indian Housing program; 2. Any program operated as part of the Housing Choice Voucher Program; 3. The Section 23 Leased Housing program.

Project Reserve. See definition for ACC Reserve Account.

Public Housing. State and federally assisted public housing.

QHWRA. Quality Housing and Work Responsibility Act of 1998.

Qualified Census Tract. Any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Reasonable Rent. A rent to owner that is not more than rent charged for comparable units in the private, unassisted market.

Receiving Housing Authority. In portability, a PHA that receives a family selected for participation in the Housing Choice Voucher program from another housing authority. The receiving PHA issues a voucher and provides program assistance to the family.

Recovering Addict. A person that: 1) has completed a supervised drug rehabilitation program and is not currently engaged in the illegal use of a controlled substance; or has otherwise successfully been rehabilitated and not currently illegally using drugs; or, 2) is involved in a supervised rehabilitation program and not currently illegally using drugs; and 3) is involved in a self-help group, such as Narcotics Anonymous, and not currently illegally using drugs.

Rent to Owner. Previously referred to as the Contract Rent. Total amount the owner is entitled to collect based on the lease and the subsidy contract.

Repairs Completed. The repairs have been completed and found to be satisfactory by DFS and in compliance with HQS.

Request for Tenancy Approval (RFTA). At the time a family has selected a unit to lease, it must submit the required HUD Request for Tenancy Approval form to DFS to initiate the process of placing the unit under lease and contract.

Residency Preference. A PHA-established preference for admission of families that reside or work or have been hired to work in the jurisdiction of the PHA.

Section 214. Section 214 of the Housing and Community Development Act of 1980 restricts HUD from making financial assistance available to non-citizens unless they belong to one of the categories for eligible immigration status specified in Section 214.

SEMAP. Section 8 (Housing Choice Voucher) Management Assessment Program. A method used by HUD to audit the management of the Section 8/Housing Choice Voucher program.

Special Admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant's place on the waiting list.

Subsidy. The amount of rental assistance given under the Housing Choice Voucher program.

Subsidy Standard. Established by a PHA to determine the appropriate number of bedrooms and subsidy amount for families of various sizes and compositions.

Suspension. Also referred to as tolling. Stopping the clock of the term on a family's voucher while a PHA determines whether or not to approve the family-selected unit for the Housing Choice Voucher program. The suspension begins when DFS receives a RFTA.

Tax Credit Rent. The rent charged for comparable units of the same bedroom size in the building that also receives the low-income housing tax credit, but that do not have additional rent assistance (e.g., tenant-based voucher assistance).

Tenant Rent to Owner. The amount the tenant must pay the owner each month based on the lease, tenancy agreement and HAP contract.

Total Family Contribution. The full amount the tenant pays for rent and utilities. The total tenant payment and the total family contribution differ in the Housing Choice Voucher program when a family selects a unit with a gross rent exceeding the payment standard.

Total Tenant Payment. Minimum amount a tenant can pay for rent and utilities.

Utility Allowance. PHA estimate of the average amount a tenant will pay each month for utilities considering the size and type of unit selected by the tenant.

Utility Reimbursement. The amount, if any, by which the utility allowance exceeds the total family contribution. The PHA issues a check in this amount to either the family or to the appropriate utility company.

Violent Criminal Activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Very Low Income Family. A family receiving an annual income at or below 50% of the Area Median Income.

Voucher. A document issued by a PHA to a family selected for admission to the Housing Choice Voucher program. The voucher describes the program and the procedures for receiving PHA approval for a unit selected by the family. The voucher

also states the family obligations under the Housing Choice Voucher program. All new program participants receive a voucher through the Housing Choice Voucher program.

Waiting List Admission. An admission from the PHA waiting list.

Welfare-to-Work. A program which allows some applicants who are on Temporary Assistance for Needy Families (TANF), have been on TANF in the past 3 years, or are TANF eligible to receive their voucher earlier than others on the waiting list in exchange for the client's agreement to work or be in training full-time, or look for work full-time.

Section 2: General Requirements

2.1: Overview [24 CFR 983.5]

DFS will operate a project-based voucher program using up to 50 vouchers, but no more than 10 percent of its budget authority for project-based assistance. PBV assistance may be attached to newly constructed or rehabilitated housing [24 CFR 983.52]. PBV will be provided to affordable housing projects that address special housing needs such as providing fully accessible, 504 compliant housing units. DFS is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6]. (Revised 05/03/2016)

2.2: Tenant-Based vs. Project-Based Voucher Assistance [24 CFR 983.2]

Except as otherwise noted in this section, or unless specifically prohibited by PBV program regulations, DFS policies for the tenant-based voucher program also apply to the PBV program and its participants.

2.3: Relocation Requirements [24 CFR 983.7]

No property shall use project-based vouchers that will require an existing family to relocate.

2.4: Equal Opportunity Requirements [24 CFR 983.8]

DFS must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, DFS must comply with DFS Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

Section 3: PBV Owner Proposals

3.1: Overview

DFS must describe the procedures for owner submission of PBV proposals and for DFS selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, DFS must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible [24 CFR 983.53 and

983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57].

3.2: Solicitation and Selection of PBV Proposals [24CFR 983.51(b) and (c)]

3.2.1: DFS Request for Proposals for Rehabilitated and Newly Constructed Units

DFS will advertise a request for proposals (RFP) for rehabilitated and newly constructed affordable housing projects that address special housing needs such as providing fully accessible, 504 compliant housing units in the following newspapers: *Leesburg Today*, *Loudoun Times Mirror*, *Asian Fortune*, *El Tiempo*, and *El Pregonero*. In addition, the Loudoun County Department of Family Services (DFS) will post the RFP and proposal submission and rating and ranking procedures on its electronic website.

The advertisement will be published in the newspapers mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units to be assisted under the available funding. Proposals will be due to DFS by close of business 30 calendar days from the date of the last publication.

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

Proposals will be considered that provide special housing needs such as fully accessible, 504 compliant housing units and/or studio and one-bedroom units and based on Owner experience and capability to manage, build or rehabilitate housing as identified in the proposal. Additional consideration will be given for proposals that address the following:

- Extent to which the project de-concentrates poverty and expands housing and economic opportunities;
- Fulfills a critical housing need;
- Site location proximate to transportation, education, and employment centers;
- If applicable, the extent to which services for special populations is provided on site or in the immediate area for occupants of the property.
- Location in a census tract undergoing significant revitalization as a result of Federal, state, or local dollars invested in the area; and
- Location in a census tract where there are meaningful opportunities for educational and economic advancement.

3.2.2: DFS Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

DFS will accept proposals for PBV assistance from owners that were competitively selected under another federal, state, or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis. DFS may periodically advertise that it is accepting proposals, in the following newspapers: *Leesburg Today*, *Loudoun Times Mirror*, *Asian Fortune*, *El Tiempo*, and *El Pregonero*. In addition to, or in place of advertising, DFS 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.

3.2.3: DFS Notice of Owner Selection [24 CFR 983.51(d)]

DFS will notify the selected owner in writing of the owner's selection for the PBV program. DFS will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, DFS will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers DFS used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. DFS will also post the notice of owner selection on its electronic website.

DFS will make available to any interested party documents that identify the basis for selecting the proposal. The documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. DFS will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner. Documents will be available for review at DFS during normal business hours.

3.3: Housing Type [24 CFR 983.52]

DFS may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of DFS selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing. The RFP will identify whether newly constructed or existing housing is being solicited.

3.4: Prohibition of Assistance for Certain Units

3.4.1: Ineligible Housing Types [24 CFR 983.53]

DFS may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, DFS may not attach or pay PBV assistance for a unit occupied by an owner and DFS may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

3.4.2: Subsidized Housing [24 CFR 983.54]

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

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that DFS may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities; Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or DFS in accordance with HUD requirements.

3.5: Subsidy Layering Requirements [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]

DFS may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements. The subsidy layering review is intended to prevent excessive public assistance 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.

DFS must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), DFS may not enter into a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

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

3.6: Cap on Number of PBV Units in Each Project

DFS will not provide PBV assistance for excepted units.

3.6.1: 25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]

DFS will not provide PBV assistance for excepted units.

3.6.2: Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

DFS will not provide assistance for excepted units. Beyond that, DFS will not impose any further cap on the number of PBV units assisted per building.

3.7: Site Selection Standards

3.7.1: Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

DFS may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

3.7.2: New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless DFS determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

3.8: Environmental Review [24 CFR 983.58]

DFS activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). DFS may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV

assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

DFS may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and DFS, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

DFS must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. DFS must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

Section 4: Dwelling Units

4.1: Overview

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

4.2: Housing Quality Standards [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, 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 does not apply to the PBV program.

4.2.1: Lead-based Paint [24 CFR 983.101(c)]

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

4.3: Housing Accessibility for Persons with Disabilities

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. DFS must ensure that the accessible dwelling units comply 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)

4.4: Inspecting Units

4.4.1: Pre-selection Inspection [24 CFR 983.103(a)]

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

4.4.2: Pre-HAP Contract Inspections [24 CFR 983.103(b)]

DFS must inspect each contract unit before execution of the HAP contract. DFS may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

4.4.3: Turnover Inspections [24 CFR 983.103(c)]

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

4.4.4: Annual Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, DFS 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 annual inspection requirement. If more than 20 percent of the annual sample of inspected contract units in a building fails

the initial inspection, DFS must re-inspect 100 percent of the contract units in the building.

4.4.5: Other Inspections [24 CFR 983.103(e)]

DFS 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. DFS must take into account complaints and any other information coming to its attention in scheduling inspections.

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

Section 5: Rehabilitated and Newly Constructed Units

5.1: Overview [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance. Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

5.2: Agreement to Enter into HAP Contract

In order to offer PBV assistance in rehabilitated or newly constructed units, DFS must enter into an agreement to enter into a HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and DFS agrees that upon timely completion of such development in accordance with the terms of the Agreement, DFS will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)]

5.2.1: Content of the Agreement [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and where determined necessary by DFS specifications and plans. For new construction units, the description must include the working drawings and specifications;
- Any addition requirements for quality, architecture, or design over and above HQS.

5.2.2: Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]

The Agreement must be executed promptly after DFS notice of proposal selection to the selected owner. Generally, DFS may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, DFS may not enter into the Agreement until the environmental review is completed and DFS has received environmental approval. However, DFS does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

DFS will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work are started.

5.3: Conduct of Development Work

5.3.1: Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. DFS must monitor compliance with labor standards.

5.3.2: Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

5.3.3: Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs. The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

5.4: Completion of Housing

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

5.4.1: Evidence of Completion [24 CFR 983.155(b)]

DFS will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. DFS will specify any additional documentation requirements in the Agreement to enter into HAP contract.

5.4.2: DFS Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, DFS must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. DFS must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, DFS must not enter into the HAP contract.

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

Section 6: Housing Assistance Payments Contract (HAP)

6.1: Overview

DFS must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

6.2: HAP Contract Requirements

6.2.1: Contract Information [24 CFR 983.203, FR Notice 11/24/08]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract units, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

6.2.2: Execution of the HAP Contract [24 CFR 983.204]

For existing housing, the HAP contract will be executed within 10 business days of DFS determining that all units pass HQS. For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of DFS determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

6.2.3: Term of HAP Contract [FR Notice 11/24/08]

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

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

6.2.4: Termination by DFS [24 CFR 983.205(c)]

The HAP contract must provide that the term of DFS's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by DFS in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, DFS may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

6.2.5: Termination by Owner [24 CFR 983.205(d), FR Notice 11/24/08]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to DFS. In this case, families living in the contract units must be offered tenant-based assistance.

At their discretion, DFS may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

6.2.6: Remedies for HQS Violations [24 CFR 983.207(b)]

DFS will abate and terminate PBV HAP contract for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program.

6.3: Amendments to the HAP Contract

6.3.1: Substitution of Contract Units [24 CFR 983.206(a)]

At DFS's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, DFS must inspect the proposed unit and determine the reasonable rent for the unit.

6.3.2: Addition of Contract Units [24 CFR 983.206(b)]

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

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

6.4: HAP Contract Year, Anniversary, and Expiration Dates [24 CFR 983.206(c) and 983.302(e)]

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

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

6.5: Owner Responsibilities under the HAP [24 CFR 983.209]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by DFS, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

6.6: Additional HAP Requirements

6.6.1: Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

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

6.6.2: Vacancy Payments [24 CFR 983.352(b)]

DFS will decide on a case-by-case basis if DFS will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

Section 7: Selection of PBV Program Participants

7.1: 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.

7.2: Eligibility for PBV Assistance [24 CFR 983.251(a) and (b)]

DFS will determine an applicant family's eligibility for the PBV program in accordance with the policies in Section 3.

7.2.1: In-Place Families [24 CFR 983.251(b)]

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by DFS is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on DFS's waiting list. Once the family's continued eligibility is determined (DFS may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and DFS must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements. This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

7.3: Organization of the Waiting List [24 CFR 983.251(c)]

DFS will use one waiting list for tenant and project based vouchers.

7.4: Selection from the Waiting List [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from DFS's waiting list. DFS may establish selection criteria or preferences for occupancy of particular PBV units.

7.4.1: Income Targeting [24 CFR 983.251(c)(6)]

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

7.4.2: 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, DFS must first refer families who require such features to the owner.

7.4.3: Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

DFS will use the same preferences as used for the tenant-based voucher program. However, if a PBV property is handicapped accessible, DFS may go down the waiting list in priority order to find a family who has a need for that specialty property.

7.5: Offer of PBV Assistance

7.5.1: Refusal of Offer [24 CFR 983.251(e)(3)]

DFS 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 DFS's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

7.5.2: 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.

7.5.3: Acceptance of Offer [24 CFR 983.252]

7.5.3.1: Family Briefing

When a family accepts an offer for PBV assistance, DFS must give the family an oral briefing. The briefing must include information on how the program works and the

responsibilities of the family and owner. In addition to the oral briefing, DFS must provide a briefing packet that explains how DFS determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

7.5.3.2: Persons with Disabilities

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

7.5.3.3: Persons with Limited English Proficiency

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

7.6: Owner Selection of Tenants

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(b)].

7.6.1: Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by DFS from DFS's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on DFS's subsidy standards.

7.6.2: Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify DFS of any vacancy or expected vacancy in a contract unit. After receiving such notice, DFS must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. DFS and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify DFS in writing (mail, fax, or email) within 5 business days of learning about any vacancy or expected vacancy.

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

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

If any contract units have been vacant for 120 days, DFS will give notice to the owner that the HAP contract will be amended to reduce the number of contract units. DFS will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of DFS's notice.

7.7: Tenant Screening [24 CFR 983.255]

7.7.1: DFS Responsibility

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

DFS will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. DFS will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

7.7.2: Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

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

Section 8: Occupancy

8.1: Overview

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

8.2: Lease [24 CFR 983.256]

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

8.2.1: Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease.

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

8.2.2: Lease Requirements [24 CFR 983.256(c)]

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

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

8.2.3: 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 DFS (the names of family members and any DFS-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 in the lease.

8.2.4: Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, DFS must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

8.2.5: Changes in the Lease [24 CFR 983.256(e)]

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

The owner must notify DFS in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by DFS and in accordance with the terms of the lease relating to its amendment. DFS must re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

8.2.6: Owner Termination of Tenancy [24 CFR 983.257]

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.

8.2.6.1: Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

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

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

8.2.7: Security Deposits [24 CFR 983.258]

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

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. DFS has no liability or responsibility for payment of any amount owed by the family to the owner.

8.3: Moves

8.3.1: Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

DFS will notify the family and owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of DFS's determination. DFS 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; and
- Tenant-based voucher assistance.

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

When DFS offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, DFS will terminate the housing assistance payments at the expiration of this 30-day period.

DFS may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

8.3.2: Family Right to Move [24 CFR 983.260]

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

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

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

8.4: Exceptions to the Occupancy Cap [24 CFR 983.261, FR Notice 11/24/08]

DFS will not provide PBV assistance for excepted units.

Section 9: Determining Rent to Owner

9.1: Overview

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

9.2: Rent Limits [24 CFR 983.301]

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

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

9.2.1: Certain Tax Credit Units [24 CFR 983.301]

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds a DFS-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard).

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

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

However, DFS is permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

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

Upon written request by the owner, DFS will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or re-determination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. DFS will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, DFS may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or re-determination of rent, if DFS determines it is necessary due to DFS budgetary constraints.

9.2.3: Re-determination of Rent [24 CFR 983.302, FR Notice 11/24/08]

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

9.2.3.1: Rent Increase

An owner's request for a rent increase must be submitted to DFS 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. DFS may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

9.2.3.2: Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment. However, DFS may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

9.2.3.3: Notice of Rent Change

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

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

9.3: Reasonable Rent [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by DFS.

9.3.1: When Reasonable Rent Determinations are required

DFS must re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- DFS approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

9.3.2: How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, DFS must consider factors that affect market rent. Such factors include the location, quality, size, type, and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

9.3.2.1: Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by DFS. The comparability analysis may be performed by DFS staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property. DFS utilizes the MRIS automated database.

9.3.3: Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, DFS may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

9.4: Effect of Other Subsidy and Rent Control

In addition to the rent limits discussed in Section 9.2 above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 3.4).

9.4.1: Other Subsidy [24 CFR 983.304]

At its discretion, DFS may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

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

9.4.1.1: Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

9.4.2: Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

Section 10: Payments to Owner

10.1: Housing Assistance Payments [24 CFR 983.351]

During the term of the HAP contract, DFS must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must

be paid to the owner on or about the first day of the month for which payment is due, unless the owner and DFS agree on a later date.

Except for discretionary vacancy payments, DFS may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by DFS is the rent to owner minus the tenant rent (total tenant payments minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

10.2: Vacancy Payments [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if DFS determines that the vacancy is the owner's fault.

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

DFS will not pay beyond the month of the vacancy.

10.3: 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 DFS in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the DFS 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 DFS 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 DFS. The owner must immediately return an excess payment to the tenant.

10.3.1: Tenant and DFS 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 DFS.

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

10.3.2: Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, DFS 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.

DFS will make utility reimbursements to the family.

10.4: Other Fees and Charges [24 CFR 983.354]

10.4.1: Meals and Supportive Services

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

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

10.4.2: Other Charges by Owner

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