

The Housing Authority of the County of Kern (HACK) Project-Based Voucher Program (PBV) encourages property owners to provide existing housing, to upgrade/rehabilitate existing substandard housing stock or to construct rental housing and make it available to lower income families at rents within Section 8 Fair Market Rents.

### **15A. PROGRAM AUTHORITY**

The PBV program is operated under HUD regulations set forth in Title 24 of the Code of Federal Regulations Part 983. The project-based voucher law was initially enacted as a part of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) approved October 21, 1998. Under this law, a public housing agency (PHA) may use a portion of its available tenant-based voucher funding for project-based rental assistance. The PBV program, a component of HACK's Section 8 rental voucher housing assistance program, is operated at the discretion of the Housing Authority. In the event of any discrepancy between these guidelines and HUD program regulations, the federal regulations shall take precedence.

### **15B. TENANT-BASED VS. PROJECT-BASED ASSISTANCE**

Under the tenant-based voucher program, an eligible family is issued a voucher and selects a unit of its choice. If the assisted family moves out of the unit, the assistance contract with the owner terminates and the family may move with continued assistance to another unit anywhere in HACK's jurisdiction, or, depending on funding limitations, anywhere in the nation.

Under the PBV program, HACK enters into an assistance contract with the owner for specified units, for a specified term (up to twenty years) subject to funding availability. Assistance is provided while eligible families occupy the units and units meet other program standards. To fill vacant project-based units, HACK refers families from its waiting list to the project owner. Because the assistance is tied to a unit, not all families who move from a unit have a right to continued assistance. However, families that have resided in a project-based unit for one year or longer may switch to the tenant-based voucher program or other comparable assistance program if openings and funding are available. PBV assistance may be allowed for individuals in group homes. PBV assistance may be authorized for existing housing (existing units that essentially comply with housing quality standards), rehabilitated housing (existing units that do not essentially comply with housing quality standards but will be brought into compliance for use in the PBV program) or newly constructed housing (units developed pursuant to an agreement for use in the PBV program).

### **15C. FUNDING**

There are no separate appropriations for the PBV program and HUD does not allocate funding for project-based voucher assistance. Funding for project-based subsidies comes from funds already obligated by HUD to HACK for the Housing Choice Voucher

Program. HACK may use a twenty percent unit limitation calculation and allow for additional project-basing of vouchers. HACK may raise the limit an additional ten percent for homeless, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use.

#### **15D. SELECTION OF PBV OWNER PROPOSALS**

HACK may select properties and owners for PBV assistance in two ways:

1. by selecting a proposed site that is assisted under a federal, state or local government housing assistance, community development or supportive services program or
2. by issuing a Request for Proposals (RFP). In either instance, HACK must ensure that the selected site complies with HUD program regulations and requirements; that the property is eligible housing; that the site complies with the allowable number of units per building; and that the property meets the site selection standards.

If HACK chooses to select a property for PBV assistance through proposal of a site that is assisted under a federal, state or local government housing assistance, community development or supportive services program, HACK requires:

1. The proposed site must have undergone that program's competitive selection process (e.g., HOME or competitively-awarded LIHTCs) within three years of the selection for PBV assistance.
2. The competitive selection process (within the three-year period) did not involve any consideration that the proposed site would receive PBV assistance.

If HACK elects to issue a Request for Proposals (RFP) for PBV assistance, the Agency will follow HACK's standard procurement procedures for issuing RFPs and federal procurement regulations. HACK will:

1. Issue through publication at 30 days prior to the due date of the proposals in at least one newspaper of countywide general circulation or multiple publications ensuring coverage of HACK's jurisdiction. The public notice shall contain details of the submission deadline and how to obtain specific information for submitting proposals. The intent is to provide broad public notice of the opportunity.
2. Not limit proposals to a single site or impose restrictions that explicitly or practically preclude the submission of proposals for PBV housing on different sites.
3. Develop specific guidelines or criteria for rating submitted proposals and make the selection criteria publicly available.

If the project site selected is a HACK-owned site, HACK shall obtain HUD review and approval of the selection. Once HACK has selected a proposal for PBV assistance, HACK must:

1. Promptly notify the selected owner in writing (date of notification shall be known as

- the proposal selection date).
2. Provide broad public notice of the project selection, such as through public news release/announcement and publication in at least one newspaper of countywide general circulation or multiple publications ensuring coverage of HACK's jurisdiction.
  3. Make documentation of the basis for the selection of the proposal available for public review.

## **15E. INELIGIBLE UNITS**

PBV assistance may not be provided for certain types of units. Housing units and/or projects that are not eligible for PBV assistance include:

1. Shared housing
2. Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution
3. Nursing homes or facilities providing continuous psychiatric, medical, nursing service, board and care, or intermediate care. However, PBV assistance may be approved for a dwelling unit in an assisted living facility that provides home health care service such as nursing and therapy for residents of the housing.
4. Units owned or controlled by an educational institution or its affiliate and designed for occupancy by the students of the institution
5. Manufactured homes
6. Cooperative housing
7. Transitional housing
8. High-rise elevator projects for families with children. These sites may be allowed if there is a HACK determination that there is no practical alternative and HUD approves the project.
9. Owner-occupied housing
10. Units occupied by a family ineligible for participation in the PBV program
11. Subsidized housing types determined ineligible for PBV assistance in accordance with HUD regulations.

PBV Assistance may be provided in certain ineligible units if HACK receives a waiver from the Secretary of HUD. HACK may provide PBV assistance only in accordance with HUD subsidy layering regulations. The subsidy layering review is intended to prevent excessive public assistance for housing projects by combining housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local entities, including assistance such as tax concessions or credits.

HACK may not enter into an Agreement or Housing Assistance Payment (HAP) contract until HUD has conducted a subsidy layering review and determined that the PBV assistance is in accordance with HUD requirements. The HAP contract must contain the owner's certification that the project has not received and will not receive (before and during the contract term) 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.

**15F. NUMBER OF PBV UNITS PER BUILDING**

When considering proposed sites, HACK may not select a proposal where the proposed number of PBV assisted units in the building exceed the greater of twenty-five units in a project or twenty-five percent of the units in a project, except as provided by regulation. All HAP contracts for PBV assisted sites must meet the greater of twenty-five units in a project or twenty five percent of the units in a project unless the PBV units are "excepted units" that are not counted against the 25 percent project cap. HACK may impose a restriction on the number or percentage of units to be assisted (less than the 25% cap) and/or may elect not to provide PBV assistance for excepted units.

"Excepted Units" are defined as units from the following categories;

1. Units exclusively serving elderly or disabled families.
2. Units housing households eligible for supportive services available to all families receiving PBV assistance in the project.
3. projects that are in a census tract with a poverty rate of twenty percent or less.

In addition, HACK may project-base HUD-VASH and FUP vouchers in accordance with statutory and regulatory requirements of the PBV program without additional requirements for approval by HUD. Prior to project basing HUD-VASH vouchers HACK must consult with the local VA Outpatient Clinic to ensure that the VA will be able to continue to provide supportive services should HACK project-base its HUD-VASH vouchers.

If at the time of initial tenancy, a family is receiving, and while a tenant in an excepted unit has received, Family Self-Sufficiency (FSS) supportive services or any other supportive service as defined below, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit as long as the family resides in the unit. If a family residing in an excepted unit fails without good cause to complete its FSS contract or the supportive services requirement, HACK will take action to terminate the PBV assistance for the excepted unit and the owner may take action to terminate the lease.

**15G. SUPPORTIVE SERVICES**

Approved supportive services are intended to help ensure stability and to maximize each tenant's ability to live independently. Support services must be easily accessible and available to tenants in the PBV assisted project. Approved supportive services may include: general supportive services, education and instructional services, independent living skills, health and medical services, mental health services, substance abuse services, vocational services and services for families.

General supportive services may include tenant's rights education, tenants' council, case management and service coordination activities separate from a treatment function, psychosocial assessment activities, individual service planning, counseling and support, coordination and referral services, crisis intervention, support groups, recreational and

socialization opportunities, legal assistance, outreach services, transportation, nutritional services, and monitoring and evaluating tenant progress.

Educational and instructional services are those activities provided to improve knowledge, daily living skills or social skills including such activities as instruction in consumer education, health education, community protection and safety, literacy, English as a second language, consumer education, literacy, and General Educational Development (GED). Services may also include screening, assessment and testing, individual or group instruction, tutoring, provision of books, supplies and instructional materials, counseling and referrals to community resources.

Independent living skills include critical life management skills targeted to assist the individual to function independently in the community. Skills may include communication and language skills; conflict resolution and mediation training; social skills; personal financial management and budgeting; credit counseling; representative payee; entitlement assistance and benefits counseling; training in cooking, meal preparation, shopping for food and needed items, personal hygiene, self-care, housekeeping, or use of public transportation; and assistance with activities of daily living.

Health and medical services are activities that provide direct treatments or are designed to assist individuals and families to attain and maintain a favorable health condition. Health and medical services may include an analysis or assessment of an individual's health problems and the development of a treatment plan, assisting an individual to identify and understand their health needs, routine medical care, preventive medical care, medication management or monitoring, health and wellness education, nursing/visiting nurse care, home health aide services, personal care, HIV/AIDS services, and pain management. These services may be provided in-home or out-of-home.

Mental health services are those services and activities that apply therapeutic processes to personal, family, situational or occupational problems in order to bring about a positive resolution of the problem or improved individual or family functioning or circumstances. Services may include individual psychosocial assessment; individual counseling, group therapy, crisis intervention, support groups, peer monitoring and support, medication management or monitoring, education about mental illness or psychotropic medication, and psychiatric services.

Substance abuse services are those activities designed to prevent, deter, reduce or eliminate substance abuse or addictive behaviors. Services may include intake and assessment, recovery readiness services for tenants with active addictions, relapse prevention and recovery planning, clinical and case management, outcome evaluation, individual or group behavioral therapy or counseling, sober recreational activities, substance abuse toxicology and screening, and self-help and peer support activities.

Vocational services are those activities and services provided to assist individuals in securing employment, acquiring or learning skills that promote opportunities for educational

advancement and increased earning potential and in retaining a job. Vocational services may include employment screening, assessment or testing; job skills training; job readiness training such as resume preparation and interviewing skills; job retention services such as support and coaching, job development and job placement services; transportation; literacy and pre-vocational training; and volunteer services.

Services for families may include support groups for parents, children or families, parenting classes, classes on child development, childcare or daycare, domestic violence services, assistance with accessing entitlements, and family reunification. Family services may also include services designed to assist individuals in seeking or obtaining legal help in civil matters such as: divorce, child support, guardianship, paternity and legal separation.

While a wide variety of supportive services may be offered, tenants may not be required to participate in medical or disability-related services (except drug and alcohol treatment for current abusers) as a condition of occupancy in an excepted unit. Supportive services need not be provided at or by the PBV-assisted development.

In order to meet the specifications for a qualifying family in an excepted unit, a family must have at least one family member receiving at least one qualifying supportive service at least once per

calendar quarter. At the time of the lease execution, the family must sign a statement of family responsibility, which contains all of the family obligations including the family's participation in a supportive service program; should the family reside in an "excepted unit." HACK will monitor the family's continued receipt of supportive services annually during the recertification process and document in the case file that the quarterly requirement has been met. HACK will take appropriate action to terminate assistance for those families that fail without good cause to complete the supportive services requirement.

## **15H. SITE SELECTION STANDARDS**

Prior to entering into an Agreement or HAP contract for PBV assistance for a selected site, HACK will determine that:

1. Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the HUD requirements, HACK's Annual Plan and HACK's Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, HACK will consider the following:
  - a. Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
  - b. Whether the PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of

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- public housing demolition;
  - c. Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;
  - d. Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;
  - e. Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;
  - f. If the poverty rate in the area where the proposed PBV development will be located is greater than 20 percent, HACK will consider whether in the past five years there has been an overall decline in the poverty rate;
  - g. Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.
2. The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d (4), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629), Executive Order 11063 (27 FR 11527), and HUD's implementing regulations. The site must ensure availability regardless of race, color, religion, national origin, sex, age, familial status, disability, sexual orientation, marital status, ancestry, and source of income, including those handicaps covered by Section 504 of the Rehabilitation Act of 1973 and its implementing regulations.
  3. The site meets the Housing Quality Standards (HQS) site standards.
  4. The site is consistent with and promotes the goals set forth in HACK's Annual Plan.
  5. The site meets HUD regulations for site and neighborhood standards established for existing housing, rehabilitated housing and new construction sites.

Activities under the PBV program are subject to HUD environmental regulations and the government entity ("responsible entity" or "RE") with local jurisdiction must perform a federal environmental review in accordance with applicable regulations. In the case of existing housing, the RE must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under other federal regulations and authorities.

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

1. The RE has completed the environmental review procedures required by

regulation, and HUD has approved the environmental certification and request for release of funds;

2. The RE has determined that the project to be assisted is exempt or is categorically excluded and not subject to compliance with environmental laws or
3. HUD has performed an environmental review and has notified HACK in writing of environmental approval of the site.

HUD will not approve the release of funds for PBV assistance if HACK, the owner, or any other party commits funds (i.e., enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before HACK submits and HUD approves its request for release of funds (where such submission is required). HACK requires the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

### **15I. HACK-OWNED UNITS**

Selection of HACK-owned sites for PBV assistance shall be done in accordance with the site selection guidelines/criteria and such selection shall be reviewed and approved by HUD. When HACK-owned units are selected, an independent entity, approved by HUD, shall:

1. Determine the rent to owner for the HACK-owned units pursuant to the same requirements as for other units, except that the independent entity (approved by HUD) must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser; and
2. Inspect the HACK-owned units as required.

The independent entity that performs these program services may be a unit of general local government in Kern County or another HUD-approved public or private independent entity. HACK may only compensate the independent entity and appraiser from ongoing administrative fee income (including amounts credited to the administrative fee reserve). HACK may not use other program receipts to compensate the independent entity and appraiser for their services. HACK, the independent entity, and the appraiser may not charge the family any fee for the appraisal or for the services provided by the independent entity.

### **15J. HOUSING QUALITY STANDARDS AND INSPECTIONS**

Housing Quality Standards (HQS) established for the Housing Choice Voucher Program apply to the PBV program.

Regulations do not create any right of the family or any party, other than HUD or HACK, to require enforcement of the HQS requirements or to assert any claim against HUD or HACK for damages, injunction, or other relief for alleged failure to enforce the

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HQS. HACK may elect to establish additional requirements for quality, architecture, or design of PBV housing; any such additional requirements must be specified in the Agreement.

Housing selected for assistance under the PBV program must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations. HACK shall also 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. Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and HUD's implementing regulations.

HACK must conduct site and unit inspections for the PBV program in accordance with HUD regulations, HQS, and Chapter 7 of HACK's Administrative Plan. The types of inspections include:

1. Pre-selection inspections HACK must examine the proposed site and all existing or rehabilitated housing units before the proposal selection date.
2. Pre-HAP contract inspections HACK must inspect each contract unit before execution of the HAP contract and may not enter into a HAP contract covering a unit until the unit (newly constructed, existing or rehabilitated) fully complies with the HQS.
3. Turnover inspections - Before providing assistance to a new family in a contract unit, HACK must inspect the unit and may not provide assistance on behalf of the family until the unit fully complies with the HQS.
4. Biennial inspections - Biennially HACK must inspect a random sample of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections are not counted toward meeting this biennial inspection requirement. If more than 20 percent of the biennial sample of inspected contract units in a building fail the initial inspection, HACK must re-inspect 100 percent of the contract units in the building.
5. Other inspections:
  - a. HACK must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. HACK will take into account complaints and any other information coming to its attention in scheduling inspections.
  - b. HACK 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 the HQS.
  - c. In conducting supervisory quality control HQS inspections, HACK must include a representative sample of both tenant-based and project-based

units.

In the case of HACK-owned units, the inspections required under this section must be performed by an independent agency approved by HUD. The independent entity must furnish a copy of each inspection report to the HACK and to HUD. HACK 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 owner.

### **15K. REQUIREMENTS FOR REHABILITATED AND NEWLY CONSTRUCTED UNITS**

When newly constructed or rehabilitated housing sites are selected for PBV assistance, HACK must enter into an Agreement with the owner to enter into a HAP contract. The Agreement must be in the form required by HUD. In the Agreement, the owner shall agree to develop the contract units to comply with the HQS, and HACK shall agree that, upon timely completion of such development in accordance with the terms of the Agreement, HACK will enter into a HAP contract with the owner for the contract units.

The Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

1. Site;
2. Location of contract units on site;
3. Number of contract units by area (size) and number of bedrooms and bathrooms;
4. Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Indication of whether or not the design and construction requirements of the Fair Housing Act and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements will be included in the description of work to be performed under the Agreement.
7. Estimated initial rents to owner for the contract units;
8. Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by HACK, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

The housing must comply with the HQS. HACK may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

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HACK may not enter the Agreement with the owner until the subsidy layering review and environmental review are completed. The Agreement must be executed promptly after HACK's notice of proposal selection to the selected owner. The owner and the owner's contractors and subcontractors must comply with all applicable State and federal labor relations laws and regulations, federal equal employment opportunity requirements and HUD's implementing regulations. The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the

U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs. The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the required evidence of completion. The owner must submit the following evidence of completion to HACK in the form and manner required by HACK:

1. Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and
2. Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.
3. Any additional documentation specified in the Agreement to be submitted by the owner as evidence of housing completion. For example, such documentation may include:
  - a. A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and
  - b. An architect's certification that the housing complies with:
    - i. HUD housing quality standards;
    - ii. State, local, or other building codes;
    - iii. Zoning;
    - iv. The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or
    - v. Additional design/quality requirements pursuant to the Agreement.

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

1. HACK must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirements imposed by HACK under the Agreement.
2. HACK will determine if the owner has submitted all required evidence of completion.

3. If the work has not been completed in accordance with the Agreement, HACK may not enter into the HAP contract.

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

## 15L. LEAD SAFE HOUSING

The purpose of this section is to implement The HUD Lead Safe Housing Rule, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the Lead-Based Paint Poisoning Prevention Act, 42 U.S. C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning for housing assisted under this part. This paragraph is issued under 24 CFR 35 Part A-R.

These requirements apply to all target housing. This is housing that is constructed before 1978 and is occupied by a family or may be occupied by a family that includes a child under the age of six (6) years old. The requirements of this section do not apply to zero-bedroom housing, housing certified by a qualified inspector to be free of lead-based paint, or housing designated exclusively for the elderly (unless a child under the age of six resides or will reside in the housing unit). The requirements of 24 CFR part 35 subpart A apply to all housing constructed before 1978 covered by a HAP contract under 24 CFR part 982.

### Lead-Based Paint Related Definitions:

1. **Chewable surface.** Protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under six (6) years of age; for example, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.
2. **Component.** An element of a residential structure identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.
3. **Defective paint surface.** A surface on which the paint is cracking, scaling, chapping, peeling, or loose.
4. **Elevated blood lead level (EBL).** Elevated blood lead level means a confirmed concentration of lead in whole blood of a child under age six (6) equal to or greater than 5 pg/dl (micrograms of lead per deciliter). A confirmed concentration is one that is measured by venous (from a vein) blood draw, and not a finger prick/quick capillary screening test.
5. **HEPA** means a high efficiency particle accumulator as used in lead-abatement vacuum cleaners.
6. **Lead-based paint.** A paint surface, whether or not defective, identified as having

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a lead content greater than or equal to 1 milligram per square centimeter (> 1mg/cm<sup>2</sup>), or 0.5 percent by weight or 5000 parts per million (PPM).

If housing constructed before 1978 is occupied by a family that includes a child under the age of six (6) years, the initial and each periodic inspection (as required under this chapter), must include a visual inspection for defective paint surfaces. If defective paint surfaces are found, they must be treated.

HACK may exempt from such treatment those defective paint surfaces that are found in a report by a qualified lead-based paint inspector to not be lead-based paint. For purposes of this chapter, a qualified lead-based paint inspector is certified or regulated by a State or local health agency, an HACK, or by an organization recognized by HUD.

Treatment of defective paint surfaces required under this chapter must be completed within thirty (30) calendar days of HACK notification to the owner. The requirements apply to:

1. All painted interior surfaces within the housing (including ceilings but excluding furniture);
2. The entrance and hallway providing entrance or exit to a unit in a multi-unit building; and
3. Exterior surfaces up to five (5) feet from the floor or ground that are readily accessible to children under six (6) years of age. This includes walls, stairs, decks, porches, railings, windows and doors, but excludes outbuildings such as garages and sheds.

HACK responsibilities when a child under six (6) is identified with an EBLL:

1. If the information regarding an EBLL case did not come from the Public Health Department, HACK shall immediately verify the information with the Public Health Department or other medical health care provider.
2. When there is a confirmed case of EBLL, HACK shall conduct an Environmental Investigation of the child's unit and the common areas servicing that unit within fifteen (15) calendar days, in accordance with chapter 16 of the HUD Guidelines. An Environmental Investigation is a risk assessment with additional question for the family regarding other source of lead exposure, and testing of other potential sources of lead exposure. This investigation must be conducted by a certified Lead-Based Paint Risk Assessor. After receiving the results HACK must notify the HUD Field Office of the outcome within ten (10) business days, and the family within fifteen (15) calendar days. The notification must include the following:
  - a. The date the investigation was completed
  - b. If the evaluation was completed in a multiunit property
  - c. A notice to each unit that was affected by the Investigation in accordance with section 35.125 of the lead Safe Housing Rules.

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3. HACK shall monitor the owner's compliance with the Lead Safe Housing Rules in accordance with the HAP contract. HACK shall provide assistance to the owner in complying with their obligations, if the owner requests assistance in writing.
4. HACK shall ensure the owner completes and clears the control of lead-based paint hazards identified in the Environmental Investigation on the child's unit and the common areas servicing that unit. If lead-based paint hazards are found in a multiunit property, HACK shall ensure that the owner completes a risk assessment on any other assisted unit where a child under the age of six (6) resides, and common areas servicing those units. If a lead-hazard is identified during the risk assessment, HACK shall ensure that the owner controls those lead-based paint hazards as well.
5. Units with identified lead-based paint hazards must have annual HQS inspections. During these inspections the unit will be re-examined for deteriorated paint and/or failed hazard control.

Owner's Responsibility: (if the owner feels that they require assistance in completing any of these steps, they may request in writing assistance from HACK.)

1. Before executing the HAP contract, the owner must inform HACK and the family of any knowledge of the presence of lead-based paint on the surfaces of the housing.
2. Once a there has been a confirmed EBLL case, the owner must notify the HUD field office and the HUD office of Lead Hazard Control and Healthy Homes. Notification must be made by e-mail to [LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov). The owner must make the notification of the confirmed case including the child's address within five (5) business days and must include:
  - a. Owners name and address (PHA code if HACK is submitting on behalf of the owner.)
  - b. Date of the EBLL test result.
  - c. Program child is participating in
  - d. Unit address and, if the housing is in a multiunit development, the development name; and
  - e. Whether HACK or the owner has notified the public health department of the EBLL, or been notified by the health department, and the date of that notification.
3. If the owner is notified of the confirmed case by any medical health care professional other than the Public Health Department, the owner shall notify the public health department of the name and address of the child within five (5) business days.
4. If the owner receives information of an EBLL from person who is not a medical health care provider, the owner must immediately notify HACK. HACK will contact the Public Health Department to confirm the case. HACK must make at least two (2) attempts to verify the information with the health department, or medical health care provider. If HACK's verification attempts fail, the HUD Field Office must be notified. HUD will then make their own attempt to verify the reported EBLL.

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5. Once the owner is aware of a confirmed EBLL case, they must complete the reduction of the lead-based paint hazard in the child’s unit and in any common areas servicing that unit which were identified during HACK’s Environmental Investigation. This lead-based paint hazard reduction must be completed within thirty (30) calendar days, using a certified lead-based paint abatement firm, or certified lead renovation firm. Once the work has been completed the owner must obtain clearance of the unit and common areas servicing that unit by an independent certified risk assessor or a trained dust sampling technician. The owner must act appropriately to protect residents and their belongings from hazards associated with treatment procedures. Residents must not enter spaces undergoing treatment until cleanup is completed. Personal belongings that are in work areas must be relocated or otherwise protected from contamination. HACK shall notify the HUD field office within ten (10) business days of the completion of the lead hazard control work, and the passing clearance.
6. If the child’s unit is in a multiunit property, the owner must conduct a risk assessment on all other assisted units where a child under the age of six (6) resides, and any other common areas servicing those units. This must be completed within thirty (30) calendar days if there are 20 other covered units or fewer, and sixty (60) calendar days if there are more than 20 other covered units.
7. If a confirmed EBLL case is identified in a multiunit building, the owner must notify all other tenants of the lead evaluation and hazard control activities.
8. If the PBV contract is greater than \$5,000 per unit per year, the owner must conduct periodic reevaluations every two years, using a certified lead risk assessor, and respond to any findings.
9. Ensure that ongoing preventative maintenance occurs to prevent deteriorated paint if there is a child under the age of six (6) in the family in accordance with section 35.1220 and 35.1335(a) of the Lead Safe Housing Rule.

Activity	Responsible Entity		
	HACK	Owner	Time Frame
Initial notification of confirmed case to HUD		X	5 Business Days
Verification, when necessary	X		2 Attempts then contact HUD
Initial notification of confirmed case to public health department, when necessary		X	5 Business Days
Environmental Investigation	X		15 Calendar Days
Notify HUD of Environmental Investigation Results	X		10 Business Days
Lead Hazard Control and Clearance After Work		X	30 Calendar Days
Notify HUD of clearance results		X	10 Business Days
Notification to other residents		X	15 Business Days

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Ongoing lead based paint monitoring		X	Ongoing
Monitoring owner’s compliance with Lead Safe Housing Rules and Housing Quality Standards	X		Ongoing

**HACK Data Collection and Record Keeping Responsibilities:**

1. HACK must attempt to obtain quarterly from local health agencies the names and addresses of children with identified EBLL and must attempt to match this information with the names and addresses of participants under this chapter. HACK must also provide quarterly an updated list of their HCV property target housing addresses to the health department so that the health department may evaluate whether they have information about incidences of EBLL. If a match occurs, HACK must determine whether local health officials have tested the housing for lead-based paint. If the housing has lead-based paint, HACK must require the owner to treat it. If the owner does not treat the lead-based paint, the family must be issued a voucher to move.
2. HACK must keep a copy of each inspection report for at least three (3) years. If housing requires testing, or treatment of chewable surfaces based on the testing, HACK must keep the test results indefinitely and, if applicable, the owner’s certification of treatment. The records must indicate which chewable surfaces have been tested and which ones have been treated. If records indicate which chewable surfaces were tested, or tested and treated, per the standards prescribed in this section, those chewable surfaces do not have to be tested or treated later.

**15M. HOUSING ASSISTANCE PAYMENTS CONTRACT**

HACK must enter into a Housing Assistance Payments (HAP) contract with the owner for all sites selected and approved for PBV assistance, including assistance for existing, newly constructed, or rehabilitated housing. The HAP contract must be in the form required by HUD and serves to provide housing assistance payments for eligible families. HACK will make housing assistance payments to the owner in accordance with the HAP contract for those contract units leased and occupied by eligible families during the HAP contract term.

The HAP contract must specify:

1. The total number of contract units by number of bedrooms;
2. Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site, the building and the specific contract units;
3. Information needed to identify the specific contract units in each building and the number of bedrooms and bathrooms in each contract unit;

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4. Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;
5. Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;
6. Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations;
7. The HAP contract term;
8. The number of units in any building that will exceed the 25 percent per building cap ("excepted units" as described above), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and;
9. The initial rent to owner (for the first 12 months of the HAP contract term).

Prior to execution of the HAP contract, HACK must inspect each contract unit. HACK may not enter into a HAP contract for any contract unit until HACK has determined that the unit complies with the HQS. In the case of existing housing, the HAP contract will be executed promptly after the selection of the owner proposal and HACK inspection of the housing. In the case of newly constructed or rehabilitated housing the HAP contract will be executed after HACK has inspected the completed units and determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion. Completion of the units by the owner and acceptance of units by HACK is subject to the provisions of the Agreement.

The initial HAP contract term may not be for less than one (1) year or more than twenty (20) years. Within one year before expiration, HACK may agree to extend the term of the HAP contract for an additional term of up to twenty (20) years if HACK determines an extension is appropriate to continue providing affordable housing for low-income families. HACK may approve multiple extension; however, in no circumstances may such extensions exceed twenty (20) years, cumulatively. If the project is owned by HACK, any changes in the initial term and any extensions must be approved by a HUD authorized Independent Entity prior to execution. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

The HAP contract must provide that the term of the HACK's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by HACK in accordance with HUD instructions. 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, HACK has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action will be implemented in accordance with HUD instructions.

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The owner may terminate the HAP contract, upon notice to HCK, if the amount of the rent to owner for any contract unit, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

The HAP contract may be amended to add or substitute contract units. At the discretion of HACK and subject to all PBV requirements, the HAP contract may be amended without a new RFP:

1. To substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, HACK must inspect the proposed substitute unit and must determine the reasonable rent for such unit.
2. To add contract units, if:
  - a. The total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of HACK's authorized budget authority
  - b. The additional PBV contract units are in the same building
  - c. The anniversary and expiration dates of the HAP contract for the additional units remain the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

In some instances, there is a staged completion of contract units. Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

Under the HAP contract owners of units receiving PBV assistance must:

1. Maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.
2. Provide all the services, maintenance, equipment, and utilities specified in the HAP contract with HACK and in the lease with each assisted family.
3. Comply with additional housing quality requirements specified by HACK (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

HACK must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. HACK may not make any HAP payment to the owner for a

contract unit covering any period during which the contract unit does not comply with the HQS. If HACK determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), HACK may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

## **16N. OWNER RESPONSIBILITIES AND CERTIFICATION**

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. Owner responsibilities include those set forth by HUD in the Housing Choice Voucher Program regulations.

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

1. All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
2. The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.
3. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by HACK, and the lease is in accordance with the HAP contract and HUD requirements.
4. To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
5. 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.
6. The amount of the housing assistance payment is the correct amount due under the HAP contract.
7. The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.
8. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, HACK, HUD, or any other public or private source) for rental of the contract unit.
9. The family does not own or have any interest in the contract unit.

Notwithstanding the above HUD requirements as a part of the HAP contract, the owner is responsible for the necessary relocation of tenants caused to be displaced during the acquisition, conversion and/or occupation of real property in accordance with the Uniform Relocation Assistance and Property Acquisition Act of 1970.

## **150. PARTICIPANT FAMILY SELECTION**

HACK must select families to refer for PBV assisted units:

1. Who are participants in the HACK's tenant-based voucher program or
2. Who have applied for admission to the voucher program and are on the waiting list and
3. Who are determined eligible for admission at commencement of PBV assistance or, for tenant-based participants, determined eligible at original admission to the program.

In order to minimize displacement of in-place families (an eligible family residing in a proposed contract unit on the proposal selection date), if a unit (existing housing or rehabilitated housing) to be placed under contract is occupied by an eligible family on the proposal selection date, the in-place family will be:

1. Placed on HACK's waiting list (if the family is not already on the list),
2. Given an absolute selection preference,
3. Referred to the project owner for an appropriately sized PBV unit in the project once the family's continued eligibility is determined.

In-place families may be denied assistance for the grounds specified by HUD regulations (family obligations or crime by family members). Admission of in-place families is not subject to income targeting, and such families must be referred to the owner from HACK's waiting list. This protection does not apply to in-place families that are not eligible to participate in the program on the proposal selection date.

In selecting applicants from HACK's waiting list for PBV units, HACK:

1. Must select applicants in accordance with the policies in Chapter 2 of this Administrative Plan.
2. May use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If HACK uses a separate waiting list for admission to the PBV units, HACK must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.
3. May use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single wait list for the PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.
4. May merge the waiting list for PBV assistance with HACK's waiting list for admission to other assisted housing programs.
5. May place families referred by the PBV owner on its PBV waiting list.
6. Must ensure combined admissions from the tenant-based and project-based voucher programs meet HUD's income-targeting requirements.
7. In referring families to occupy PBV units with special accessibility features for

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persons with disabilities, HACK must refer families who require such accessibility features to the owner.

8. When referring families to owners for admission to "excepted units" (as defined above), HACK must give preference to elderly or disabled families or to families receiving supportive services.

The applicant family's position on HACK's waiting list for tenant-based assistance shall not be affected if a:

1. Family refuses HACK's offer of PBV assistance, or
2. PBV owner rejects a family for admission to the owner's PBV units.

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

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

HACK has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. The owner is responsible for screening and selection of the family to occupy the owner's unit. The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

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

HACK must give the owner:

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

When a family wants to lease a dwelling unit, HACK may offer the owner other

information in its possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HACK must give the same types of information to all owners.

**15P. INFORMATION FOR ACCEPTED FAMILY**

When a family accepts an offer of PBV assistance, HACK must give the family an oral briefing. The briefing must include the following information:

1. A description of how the program works
2. Family and owner responsibilities
3. A written information packet including:
  - a. How HACK determines the total tenant payment for a family;
  - b. Family obligations under the program; and
  - c. Applicable fair housing information.

If the family head or spouse is a disabled person, HACK must take appropriate steps to assure effective communication in conducting the oral briefing and in providing the written information packet, including in alternative formats. HACK has a mechanism for referring a family that includes a person with mobility impairment to accessible PBV units. HACK will take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

**15Q. LEASING OF CONTRACT UNITS**

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

**15R. VACANCIES**

When filling vacant units:

1. The owner must promptly notify HACK of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, HACK must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies.
2. The owner must lease vacant contract units only to eligible families on HACK's

waiting list and referred by HACK.

3. HACK and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

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

## **15S. LEASE**

In order to receive PBV assistance for a unit, the owner must enter into a written lease with the tenant and the tenant must have legal capacity to enter a lease under state and local law. The lease is subject to the following:

1. If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided below. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as HACK's model lease.
2. In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.
3. HACK may review the owner's lease form to determine if the lease complies with state and local law and may decline to approve the tenancy if HACK determines that the lease does not comply with state or local law.
4. The lease must specify all of the following:
  - a. The names of the owner and the tenant;
  - b. The unit rented (address, apartment number (if any), and any other information needed to identify the leased contract unit);
  - c. The term of the lease (initial term and any provision for renewal);
  - d. The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;
  - e. A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and
5. The amount of any charges for food, furniture, or supportive services.
6. The HUD-required tenancy addendum in the lease shall state:
  - a. The program tenancy requirements (as specified in this part);

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- b. The composition of the household as approved by HACK (names of family members and any HACK-approved live-in aide).
  - c. The terms of the tenancy addendum shall prevail over other provisions of the lease.
7. If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give HACK a copy of all such changes.
8. The owner must notify HACK in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by HACK and in accordance with the terms of the lease relating to its amendment. HACK must re-determine reasonable rent based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the re-determined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.
9. The initial lease term must be for at least one year.
10. The lease may specify a maximum period of tenant absence from the unit that may be shorter than the maximum period permitted by HACK policy and subject to HUD regulations.

**15T. OWNER TERMINATION OF TENANCY AND EVICTION**

During the course of the lease, the owner may not terminate the lease without good cause. "Good cause" does not include a business or economic reason or desire to use the unit for an individual, family or non-residential rental purpose. Upon expiration of the lease the owner may:

1. Renew the lease;
2. Refuse to renew the lease for good cause;
3. Refuse to renew the lease without good cause, in which case HACK would provide the family with a tenant-based voucher and the unit would be removed from the PBV HAP contract.

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

**15U. SECURITY DEPOSIT**

The owner may collect a security deposit from the tenant if the deposit is not in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease. The owner must give

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

### **15V. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS**

HACK subsidy standards determine the appropriate unit size for the family size and composition. If HACK determines that a family is occupying a wrong-size unit or unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, HACK must promptly notify the family and the owner of this determination, and of HACK's offer of continued assistance in another available unit. The other available unit may be:

1. In an appropriate-size PBV assisted unit in the same building or in another building;
2. A public housing unit;
3. Tenant-based rental assistance under the voucher program; or
4. Other comparable public or private tenant-based assistance (e.g. under the HOME program).

If HACK offers the family the opportunity to receive tenant-based rental assistance under the voucher program, HACK must terminate the housing assistance payments for the wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by HACK). If HACK offers the family the opportunity for another form of continued housing assistance not in the tenant-based voucher program, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by HACK, or both, HACK must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by HACK.

### **15W. FAMILY RIGHT TO MOVE**

The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to HACK) in accordance with the lease. If the family terminates the lease in this manner, HACK must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

Before providing notice to terminate the lease under this section, the family must contact HACK to request comparable tenant-based rental assistance if the family wishes to move

with continued assistance. If a voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, HACK must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

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

### **15X. RENT TO OWNER**

The amount of the initial and subsequent (re-determined) rent to owner is determined in accordance with HUD regulations. The initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term. The rent to owner is re-determined at the annual anniversary if the owner requests a rent increase in the form and manner prescribed by HACK and in accordance with HUD regulations. The rent to owner is also re-determined at such time when there is a five percent or greater decrease in the published FMR, in accordance with HUD regulations.

Except for certain tax credit units, the rent to owner must not exceed the lowest of:

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

In the case of a tax credit assisted unit, the PBV assisted rent to owner shall be determined in accordance with applicable HUD regulations at the time of the determination. HACK shall determine reasonable rent in accordance with HUD regulations and Chapter 9 of this Administrative Plan. The rent to owner for each contract unit may at no time exceed the reasonable rent. Any HUD-approved exception payment standard amount applies to both the tenant-based and project-based voucher programs. The same HACK utility allowance schedule applies to both the tenant-based and PBV programs. HACK will not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance. For HACK-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with HUD regulations.

HACK's notice of a rent adjustment constitutes an amendment of the rent to owner

specified in the HAP contract. 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. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

In addition to the rent limits set forth above and by HUD regulations for the PBV program, the following restrictions apply to certain units:

1. For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program
2. The rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent (as determined by the applicable program) for any contract units in any of the following types of federally subsidized project:
  - a. An insured or non-insured Section 236 project;
  - b. A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
  - c. A Section 221(d)(3) below market interest rate (BMIR) project; 1v. A Section 515 project of the Rural Housing Service;
  - d. A project receiving low-income housing tax credits;
  - e. Any other type of federally subsidized project specified by HUD.
3. The rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.
4. At its discretion, HACK may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.
5. For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see HUD regulations.

In addition to the limitation to 110 percent of the FMR, the rent reasonableness limit, the rental determination, the special limitations for tax credit units, and other rent limits, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

## **15Y. PAYMENTS TO OWNER**

During the term of the HAP contract, HACK must make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments must be made for the months during which a contract unit is leased to and actually occupied by an eligible family. HACK 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), except for vacancy payments as noted below.

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Each month, HACK must make a housing assistance payment (HAP) to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract. The monthly HAP by HACK to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance). To receive payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out ("move-out month"). However, the owner may not keep the payment if HACK determines that the vacancy is the owner's fault. At HACK's discretion, the HAP contract may provide for vacancy payments to the owner for a period not to exceed two full months following the move-out month. The vacancy payment to the owner will be determined by HACK, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant. HACK will make vacancy payments to the owner only if:

1. The owner gives HACK prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);
2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
4. The owner provides any additional information required and requested by HACK to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by HACK and must provide any information or substantiation required by HACK to determine the amount of any vacancy payment.

The tenant rent is the portion of the rent to owner paid by the family. HACK determines the tenant rent in accordance with HUD requirements. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by HACK to the family and the owner. The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance) and the amount of the tenant rent as determined by HACK is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by HACK.

**H.A.C.K [SECTION 8 ADMINISTRATION PLAN]**

The owner must immediately return any excess payment to the tenant. The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the housing assistance payment by HACK.

HACK is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. HACK is not responsible for paying the tenant rent, or for paying any other claim by the owner. HACK may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner and may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

If the amount of the utility allowance exceeds the total tenant payment, HACK shall pay the amount of such excess as a reimbursement for tenant-paid utilities ("utility reimbursement") and the tenant rent to the owner shall be zero. HACK may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family. If HACK chooses to pay the utility supplier directly, HACK must notify the family of the amount paid to the utility supplier.

Except as provided for assisted living developments, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy. In assisted living developments receiving PBV assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.