

CHAPTER 16

PROJECT-BASED VOUCHER PROGRAM

16.0 INTRODUCTION

The Project Based Voucher (PBV) program attaches rental assistance to a particular unit rather than to a family. This chapter outlines the HA’s policies pertaining to administration of the PBV Program.

16.1 ALLOCATION OF PBV UNITS BETWEEN HOUSING AUTHORITIES

MTW Agreement Between HUD and Housing Authority of the City of San Jose: Attachment D: “A. Relationship between Housing Authorities. The Housing Authority of the City of San Jose (HASJ) has agreed that on HASJ's behalf the Housing Authority of the County of Santa Clara (HACSC) may submit Annual MTW Plans, Annual MTW Reports and any other MTW documents relating to HASJ's MTW Agreement and may take any actions authorized by HASJ's MTW Agreement. The actions HACSC may take under its MTW Agreement or HASJ's MTW Agreement may include, without limitation, use of any MTW Funds originally committed to HACSC or HASJ, for any purpose and in any manner authorized for either HACSC or HASJ under either MTW Agreement.”

April 1, 1996 Agreement Between the Housing Authority of the City of San Jose and the Housing Authority of the County of Santa Clara, Paragraph 4: “The City Authority hereby assigns and delegates to the County Authority the entire management of the Section 23 and Section 8 contracts, allocations and programs in the City of San Jose pursuant to such contracts and amendments thereto as shall be authorized by HUD (hereinafter all referred to as “Programs”).”

Paragraph 5: “City Authority hereby further delegates and assigns to the County Authority any and all rights and privileges regarding negotiating amendments, extensions, modifications of all programs and to take all actions necessary, convenient or desirable to completely manage and administer the Programs subject to the provisions of the Agreement and to HUD rules, regulations and policies.”

Policy:

For affordable housing projects which have been awarded PBVs under this Chapter, and which are located in the City of San Jose, the PBV units may be allocated to either the County MTW contract or the City MTW contract after considering the following criteria:

- The relative amount of City of San Jose versus County of Santa Clara investment, ownership, and service commitments to the project.
- The relative amount of available PBV program cap capacity, to avoid exhausting the applicable PBV program caps of either agency before the other.

16.2 LIMIT ON NUMBER OF PBV UNITS

HOTMA section 106(a)(2): “A PHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract (ACC) authorized units. A PHA may project-base an additional 10 percent of its ACC authorized units above the 20 percent program limit, provided the additional units fall into one of the eligible exception categories: Homeless, units for Veterans, units offering Supportive Services, units in a census tract with a poverty rate of 20 percent or less.”

“A PHA may project-base an additional 10 percent of its ACC authorized units above the 20 percent program limit, provided the additional units fall into one of the eligible exception categories: homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons , or in a census tract with a poverty rate of 20 percent or less.”

24 CFR 983.56 (a): “Except as provided in paragraph (b) of this section, the HA may not select a proposal to provide PBV assistance for units in a project or enter into an Agreement or HAP contract to provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project. (b): Exceptions to 25 percent per project cap: Units in a single family project, excepted units in a multifamily project. ‘Excepted’ units means units in a multifamily project that are specifically made available for elderly or disabled families or families receiving supportive services (at least one family member must be receiving at least one qualifying supportive service).”

MTW Plan:

The HA will “raise the PBV Program Cap to 40 percent of the Consolidated Annual Contributions Contract (CACC) authorized units, without requiring any special allocations or target populations for the PBVs. On an annual basis SCCHA [will] evaluate the previous year’s voucher turnover rate and the following year’s fiscal outlook to decide how many PBVs to allocate.”

“SCCHA proposes to allow more than 25% of the units in an existing building to be project-based in projects that serve families and provide services but that do not require participation in those services.”

Policy:

The HA will project base up to 40 percent of the CACC authorized units.

To be eligible for the service exception, a project must make supportive services available to the excepted unit. The family does not have to accept and receive the supportive service for the exception to apply to the unit. Supportive services include, but are not limited to the following:

- Childcare
- Transportation
- Education
- Job training and employment counseling
- Substance/alcohol abuse treatment or counseling
- Household skill training
- Homeownership counseling

The services must be designed to help families achieve self-sufficiency or live in the community as independently as possible.

16.3 MODIFIED ELDERLY DEFINITION FOR PBV

SCCHA MTW Annual Plan FY2015, Activity 2015-3: SCCHA modified the age, “for the Project Based Voucher (PBV) program, at which a person or family is considered elderly from persons aged 62 or older to persons aged 55 or older in order to align with the definition used by a number of affordable housing developments in the area.”

Policy:

For PBV programs, SCCHA defines elderly families as those whose head of household or spouse is 55 years of age or older.

16.4 HOUSING AUTHORITY-MANAGED PROJECTS

24 CFR 983.51 (e): “A HA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the [competitive] selection process and determines that the HA-owned units were appropriately selected based on the selection procedures specified in the HA administrative plan.”

MTW Plan:

“[The HA will] select SCCHA-owned housing projects for project-based assistance without a competitive process.”

Policy:

Housing projects (including public housing) managed by the HA may be selected for project-based assistance without competition and without HUD approval. The housing projects are still subject to certain other regulations, including Site and Neighborhood Standards, Environmental Review and Subsidy Layering Review.

All other PBV projects will be submitted and selected by a competitive selection process described in 16.5 of this chapter.

16.5 PROJECT SELECTION PROCEDURES

24 CFR 983.51 (a): “The HA administrative plan must describe the procedures for owner submission of PBV proposals and for HA selection of PBV proposals.”

24 CFR 983.51 (b) (2): “The PHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded Low-Income Housing Tax Credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.”

MTW Plan:

[The HA will] “eliminate certain requirements in selecting Project-Based Voucher (PBV) proposals by expanding the definition of a competitive selection process to include any form of open public solicitation or invitation process conducted by a Federal, State, or local government, where a proposal is selected subject to funding availability; waiving HUD’s requirements that the PHA must select proposals within three years of the earlier selection date by allowing proposals within fifteen years of the selection date; and allowing earlier competitive selection proposals to consider that the project would require rental assistance, including PBV assistance.”

Policy:

The HA will select non-Housing Authority owned projects through a competitive or streamlined selection process.

Competitive Selection Process

The HA will issue a Request for Proposal.

Streamlined Selection Process

The HA may award Project-Based Vouchers (PBVs) to projects that were previously awarded funding or considered for funding for PBVs through a competitive selection,

open public solicitation or invitation process under another federal, state or local housing program within 15 years of the PBV proposal selection date.

Solicitation Requirements, Proposal Evaluation Criteria and Selection Process

The following section applies to both competitive and streamlined selection processes.

The HA will describe the requirements of the solicitation, which may include, but are not limited to:

- Number of PBVs being made available;
- Submission deadline, if applicable;
- Required format of proposals;
- Required submission format (mail, fax, e-mail, etc.);
- Housing type (new construction, rehab, existing);
- Resident type (senior, family, etc.);
- Minimum/maximum PBV units in project;
- Term of Housing Assistance Payment contract; and
- Other special requirements, i.e., labor standards/Davis Bacon requirements, environmental review, and Housing Quality Standards requirements.

The HA may provide PBV assistance only to existing, rehabilitated or new construction housing developments as defined by HUD regulation 24 CFR §983.3 and in accordance with all other HUD Section 8 regulations. If a proposal is for existing or rehabilitation housing, the units to be project based must:

- Be newly permanent affordable housing (conversion of market rate housing or conversion of non-permanent affordable housing to permanent affordable housing);
- Be vacant or currently occupied by families who are earning less than 50 percent of the Area Median Income adjusted by household size; and
- Not have other federal, state or local housing restrictions and regulatory agreements that conflict with the HUD Section 8 regulations or HA policies.

Each proposal received must meet the following project readiness requirements:

- Proposer must submit evidence of site control – site control means that the proposer has obtained an enforceable right to use a parcel of land for the proposed development prior to the submission of the proposal. This right may consist of fee title, ground lease, or an enforceable option;
- Proposer must submit evidence that the proposed construction is permitted by current zoning ordinances or regulations at the time of the proposal submission;
- Proposer must demonstrate the capacity to secure all necessary funding for development within 12 months of the selection date for PBVs;
- Proposer of new housing construction or rehabilitation housing must be able to execute an Agreement to enter into Housing Assistance Payments (AHAP) and start construction within 18 months of the selection date for PBVs; and
- Proposer of existing housing project must demonstrate that the units will be ready for occupancy within 120 days of the selection date for PBVs.

Projects that meet the project readiness requirements will be further evaluated for consideration of the conditional award of PBVs using evaluation factors, which may include, but are not limited to:

- Financial feasibility of the project;
- Supportive services;
- Tenant selection criteria;
- Leveraging of private and other governmental funding;
- Experience of proposer;
- New or increased supportive services and/or amenities for existing housing;
- De-concentration of poverty; and
- Proximity/accessibility to educational and economic advancement opportunities.

The HA may consider other factors such as, geographical distribution of the PBVs and sizes of units in making the final determination for conditional award of PBVs.

The HA will only award Section 8 PBVs to units which have an underlying regulatory agreement with maximum income limits at 50 percent of Area Median Income or lower.

The HA will manage and issue its Project Based Vouchers as necessary in order to increase the number of units available for extremely low-income families by attaching PBVs to units that have an underlying regulatory agreement with maximum income limits at 30 percent of Area Median Income or lower.

The HA will manage and issue its Project Based Vouchers as necessary to increase the number of units available for families of three or more persons.

The HA will make a minimum of 300 Project Based Vouchers available for award each calendar year, subject to the 95% maximum funding utilization policy (Administrative Plan Section 1.3) and HA staff projections of leasing, voucher, and funding availability.

Public Notice of Selected Proposals

The HA will publish a public notice of selected proposals within 30 days of initial selection.

16.6 SITE SELECTION STANDARDS

24 CFR 983.57 (b) (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 PHA Plan under 24 CFR 903 and the HA Administrative Plan.”

Policy:

In determining if a project meets the goal of deconcentrating poverty and expanding housing and economic opportunities, certain conditions of the census tract and general area where the site is located will be considered, including:

- Poverty rate: The HA will not select a project for PBV if it is located in an area with a poverty rate greater than 20% unless at least two of the following conditions are present:
 - There has been an overall decline in the poverty rate for the area over the past five years; and/or
 - New market rate units have been/are being developed in the same census tract where the proposed PBV development will be located and it is likely that those units will positively impact the poverty rate in the area; and/or
 - The area in which the proposed PBV development will be located is undergoing significant revitalization.
- Economic/educational opportunities: Projects selected for PBV must be located in an area where there are, within a reasonable traveling distance, meaningful opportunities for educational and economic advancement.
- Educational opportunity includes adult education, vocational school, state or community college.
- Economic advancement opportunities include retail and other businesses offering entry-level job opportunities.
- Prior to selection of any project for PBV, the HA will conduct the following site inspections: General site inspection.
- Unit inspection (rehabilitation and existing only).
- Site and Neighborhood Standards review per HUD regulations at 24 CFR 983.57.

16.7 HAP CONTRACT

82 Federal Register 5458 (January 18, 2017): “A housing assistance payment contract pursuant to this paragraph between a public housing agency and the owner of a project may have a term of up to 20 years.”

82 Federal Register 5458 (January 18, 2017): “The PHA may agree to enter into an extension (at the time of the initial HAP contract execution or at any time before the

expiration of the contract), for an additional term of up to 20 years. A HAP contract extension may not exceed 20 years.”

Policy:

All HAP contract terms under the PBV program will be agreed upon between the owner and the HA up to a maximum term of 20 years, with the option to extend for an additional period(s) of up to 20 years at the discretion of the HA.

HOTMA Section 106(a)(4): “The agency and the owner may add eligible units within the same project to a housing assistance payments contract at any time during the term there or without being subject to any additional competitive selection procedures.”

Policy:

The HA may add units to a HAP contract for projects that provide housing for special needs populations, which may include, but are not limited to:

- Disabled
- Elderly
- Large Families
- Homeless
- Transition- Age Youth

The HA will also consider adding units to a HAP contract located in areas of Santa Clara County where there is a limited supply of Project Based Vouchers or affordable housing.

24 CFR 983.211 (a): Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equalizing the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family.

Policy:

The HA will remove units from the HAP contract occupied by families whose tenant rent equals the PBV contract rent 180 days following the last HAP payment.

(b): If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.”

Policy:

If the project is 100% project based, the HA will reinstate the removed unit upon owner request once the unit is vacant.

If the project is partially assisted, the HA will substitute a different vacant unit of the same bedroom size for the removed unit upon the owner's request and within a 90 day time period.

24 CFR 983.254 (b): “If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the HA to fill such vacancies), the HA 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.”

Policy:

If a PBV contract unit remains vacant or occupied by an HA unauthorized resident for 4 months or longer, the HA may remove that unit from the contract, thereby reducing the total number of units under contract.

16.8 RENT DETERMINATION

24 CFR 983.301 (b): “Except for certain tax credit units, the rent to owner must not exceed the lowest of: (1) An amount determined by the HA, not to exceed 110% of the applicable fair market rent for the unit bedroom size minus any utility allowance; (2) the reasonable rent; or (3) the rent requested by the owner.”

24 CFR 983.302 (c)(2): “If the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except: (i) To correct errors in calculations in accordance with HUD requirements; (ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to §983.55; or (iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and tenant.”

Policy:

The HA will not reduce the contract rent below the initial rent for any units under the initial HAP Contract, in accordance with 24 CFR §983.302(c)(2).

16.9 ANNUAL INSPECTIONS

24 CFR 983.103 (d): “(1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. (2) If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the PHA must re-inspect 100 percent of the contract units in the building.”

MTW Plan:

“SCCHA proposes to modify the inspection frequency of housing stock biennially. SCCHA may make exceptions to this inspection schedule for landlords and properties that do not comply on a consistent basis with HQS.”

Policy:

The HA will inspect 100% of PBV units at least biennially.

16.10 PARTICIPANT SELECTION

24 CFR 983.251 (b) (2): “In order to minimize displacement of in-place families, if a unit to be placed under contract is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project.”

MTW Plan:

“When PBV assistance is layered with 50% tax-exempt bonds, the lower income limits apply. Therefore, SCCHA [will] waive the PBV regulation related to preference for in-place families in order to allow for the continued commitment of tax-exempt bonds and tax credits to the disposed public housing properties.”

Policy:

In-place families with income over 50% of the current Area Median Income (AMI) for the family size, but less than 80% of the AMI will be considered ineligible for PBV assistance at the HA’s public housing properties that are transitioning to private non-profit housing under a PBV Housing Assistance Payment contract. Such families will be issued Section 8 Housing Choice Vouchers and will be required to move from the property before the start of the PBV contract.

24 CFR 983.251 (c) (1): “Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.”

MTW Plan:

“[The HA] allows direct owner referrals of applicants after 30 days of unsuccessful attempts by the owner to process referrals from the HA’s project-based applicant waiting list.”

Policy:

The HA will refer applicants from the HA’s PBV waiting list for a period of 30 days following notification of the PBV unit vacancy/impending vacancy. PBV owners may make their own referral of an applicant if they are unsuccessful in finding an interested, eligible applicant from the HA’s waiting list during the 30-day referral period.

For newly constructed projects, PBV owners may make their own referral of an applicant if they are unsuccessful in finding an interested, eligible applicant from the HA’s waiting list, beginning 30 days after the HA refers initial applicants.

Owners must have an affirmative fair-housing marketing plan on file with the HA in order to make direct referrals of applicants.

Owners are responsible for screening all applicants referred to them for tenancy suitability.

16.11 CONTINUED ELIGIBILITY

24 CFR 983.251 (a) (2): “Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.”

MTW Plan:

“For project-based units that also utilize LIHTC (Low Income Housing Tax Credits), [the HA may] use the TIC (Tenant Income Certification) form required under the LIHTC program as verification of the income and assets.”

Policy:

The HA will use the Tenant Income Certification (TIC) form provided by the PBV owner to verify the income and assets for applicants referred to fill LIHTC-subsidized PBV units.

The HA will use an owner-provided TIC to verify income and assets for participants at their regular reexamination as long as the TIC is dated within 120 days of the HA’s regular reexamination effective date.

16.12 LEASE AND OCCUPANCY

24 CFR 983.352 (b) (1): “At the discretion of the HA, the HAP contract may provide for vacancy payments to the owner for a HA-determined period of vacancy extending

from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.”

24 CFR 983.260 (a): “The family may terminate the assisted lease at any time after the first year of occupancy. **(b):** If the family has elected to terminate the lease in this manner, the HA must offer the family the opportunity for tenant-based rental assistance. **(c)** If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family’s lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance. **(d):** If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.”

MTW Plan:

The HA “requires a minimum two-year stay for Project-Based Voucher (PBV) residents before they are eligible to receive a tenant-based voucher or HCV.

Policy:

The following lease and occupancy rules will apply for all PBV units:

- Vacancy payments (calculated based on 80% of the last PBV tenant’s contract rent amount) may be made for up to 30 days for vacant PBV units provided the vacancy is not the owner’s fault and the owner gave prompt notice to the HA of the vacancy.
- Vacancy payments (calculated based on 80% of the last PBV tenant’s contract rent amount) may be made for up to 60 days for vacant PBV units designated for disabled and chronically homeless populations provided the vacancy is not the owner’s fault and the owner gave prompt notice to the HA of the vacancy.
- If a family remains in a PBV unit for two full years and requests to terminate their lease, the HA will offer the family a tenant-based Housing Choice Voucher, if available.
- If a tenant based Housing Choice Voucher isn’t available, the family will be placed on a priority tenant-based Housing Choice Voucher waiting list on a first-come-first-serve basis.
- The two-year minimum stay does not apply to VASH-PBV families.
- The two-year minimum stay may be waived, and the family may be eligible for a Housing Choice Voucher, in the following circumstances: an approved reasonable accommodation that requires a tenant to move, when the PBV unit is declared uninhabitable, or VAWA cases.

16.13 OVER OCCUPIED AND UNDER OCCUPIED UNITS

24 CFR 983.260 (a): “The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a: (1) Wrong size unit, or (2) Unit with accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA’s offer of continued assistance in another unit...”

MTW Plan:

“If a family receiving Project Based Voucher assistance is over-housed or under-housed but not in violation of Housing Quality Standards (HQS) space standards, the family may remain in the wrong sized unit if the rental market vacancy rate is below five percent until (1) an appropriate sized unit becomes available at the project; or (2) the family requests a tenant based voucher, whichever occurs first. Families in violation of HQS space standards will not be allowed to remain in a wrong-sized unit and will receive a 90-day notice to move to a right-sized unit.”

Policy:

In cases where a PBV unit becomes overcrowded or under-occupied,

- The current owner must offer the residing family a suitable and appropriately sized vacant PBV unit within the property, if such vacancies exist.
- If no such vacancy exists and the rental market vacancy rate is 5 percent or above, SCCCHA will issue a tenant-based Housing Choice Voucher, if available.
- If no such vacancy exists and the rental market vacancy rate is below 5 percent, the family may remain in the wrong sized unit until the vacancy rate rises to 5 percent or above.
- Families in violation of the HQS space standards will be given a 90-day notice to move to the right-sized unit, regardless of rental market vacancy rate.

24 CFR 983.260 (b) (1): “If the 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, the HA must offer the family the opportunity to receive continued housing assistance in another unit. (2): The HA policy of such continued housing assistance must be stated in the administrative plan.”

Policy:

The HA will notify the family and owner if it is determined that a family is occupying a unit with accessibility features that are not needed or lack of accessibility feature that is needed by the tenant. Continued assistance will be offered in the order stated below:

- The current owner must offer the residing family a suitable and appropriately sized vacant PBV unit within the property, if such vacancies exist.
- Issue a tenant based Housing Choice Voucher, if available.